RESOLUTION TRUST CORPORATION'S MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS

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Resolution Trust Corporation's Mino...

HEARING

BEFORE THE

SUBCOMMITTEE ON
GENERAL OVERSIGHT, INVESTIGATIONS,
AND THE RESOLUTION OF
FAILED FINANCIAL INSTITUTIONS

OF THE

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

MARCH 2, 1994

Printed for the use of the Committee on Banking, Finance and Urban Affairs

Serial No. 103-122



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RESOLUTION TRUST CORPORATION'S MINORITY AND WOMEN-OWNED BUSINESS PROGRAMS

WEDNESDAY, MARCH 2, 1994

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON GENERAL OVERSIGHT, INVESTIGATIONS, AND THE RESOLUTION OF FAILED FINANCIAL INSTITUTIONS, COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,

Washington, DC.

The subcommittee met, pursuant to notice, at 10:08 a.m., in room 2222, Rayburn House Office Building, Hon. Floyd H. Flake [chairman of the subcommittee] presiding.

Present: Chairman Flake, Representatives Velazquez and Roth.

Also present: Representatives Roybal-Allard, Wynn, and Watt.

Chairman FLAKE. OK. We would like to begin. We were trying to give just a few moments for persons in consideration of the weather conditions over which none of us obviously has any control. For some reason, somebody is seemingly upset, the people upstairs there, and they are taking this season—New York will have its 15th snowstorm today, and Washington is somewhere close also. So we would like to begin, though, so that those persons who have come as our witnesses might be able to know that within a reasonable timeframe they will be able to get back to their responsibilities. Thank you very much.

I would like to call to order the Subcommittee on General Oversight, Investigations, and the Resolution of Failed Financial Institutions.

Good morning and welcome to this hearing. This morning we consider the implementation of the management reforms of the RTC Completion Act of 1993 and its amendments to the Minority and Women-Owned Business Program. Today's hearing is very important to me as well as to other members of this subcommittee, as well as members of the full Banking Committee. I, along with many of my colleagues on this subcommittee, have heard from individuals nationwide who, in too many instances, have consistently encountered difficulty when attempting to conduct business with the RTC. As a government corporation established to dispose of and manage the assets of failed savings and loans, it is imperative that all individuals receive equal opportunity to participate in this process.

While these financial crises cost the taxpayers billions of dollars, it also creates a variety of financial opportunities for related businesses regardless of race, ethnicity, or gender, yet it has been widely reported that there are too many examples of only insiders being

able to secure viable deals with the RTC. Other examples of flagrant abuse and misuse of power by RTC personnel as reported to this subcommittee, I believe, can be attributed to a lack of responsible oversight and management from the top of those individuals responsible for executing the directives.

I want to state for the record that I am somewhat dismayed that here we are 1 year and $10 billion later, and we still do not have a Chief Executive Officer who will be accountable to this Congress and to the American taxpayer in directing the RTC to abide by the laws. How can we expect to see the long overdue results we need to see in the MWOB Program under these circumstances? Yet, I am certain that you as representatives of the RTC are prepared today to dazzle this subcommittee with stellar numbers reflecting record achievements when I have proof to the contrary.

It is unfortunate that Mr. Altman could not be here with us today, but he has assured me that Mr. Jack Ryan, the permanent Deputy Chief Executive Officer will respond in full to the subcommittee's questions and be accountable for the RTC's policies outlined today.

Toward that end, there are specific areas that the subcommittee will be targeting this morning and will continue to monitor carefully until the RTC completes its task. Specifically, we will focus on the progress the RTC is making in advancing its management reforms agenda. I am including those concerns in my opening statement because I want to make it absolutely clear that these are the areas of greatest importance to me and other members of this subcommittee and the Banking Committee as it relates to these specific areas.

I want to know what the RTC is doing to maximize the use of minority and women-owned businesses; to increase opportunities for small investors; to promote and guarantee adequate competition and fair and consistent treatment of all persons; to ensure that contracting policies and procedures require the purchase of sound, cost-effective services; to ensure that contracts are adequately planned, including clear assessment of services needed, cost estimations, and scope of work definitions; to ensure that all policies and procedures are followed in the solicitation, selection, and awarding of contracts; and last, but certainly not least in importance, to provide the training and necessary oversight to guarantee that all the RTC program and field offices understand the minority and women's programs and its requirements and incorporate those into their daily operations.

I have read the status report of the RTC Completion Act management reforms, section 3(a), and am requesting a copy of the forthcoming directive regarding the contracting policy and procedures revision due to be finalized later this month. Further, I would like to know what affirmative actions the RTC has taken under the revised minority preference in acquisition statutes to ensure the participation of minority acquirers in the regulation solution of failed thrifts; and I would like to review in advance the new minority resolution preference guidelines to ensure that they reflect the intent of the RTC Completion Act and, in fact, maximize MWOB participation.

Much to my dismay, the RTC issued guidelines on January 10, 1994, which were immediately rescinded as not complete nor fully reflective of RTC's implementation plans. This flawed guidance was provided to potential minority acquirers and caused serious problems. And I might add a number of phone calls and a great deal of dismay on the part of those who were seeking to do business with the RTC.

Even more distressing is the issuance of the Directive on Minority Preference in Resolutions, dated February 28, 1994, which I received a copy of yesterday, which followed the RTC's solicitation of bids nationwide without this directive available or in place. This is not good. Please know that if there is some confusion as to what Congress meant when it adopted this language, we will be more than willing to help you to interpret the statute so that it becomes more clear and more concise.

Also I, along with other members of this subcommittee, will be monitoring very carefully the RTC's complete implementation of the 10 management reforms. We do not intend, however, to allow the RTC to continue working in such a haphazard and inconsistent manner. Time is of the essence here and since this is Congress' last opportunity to ensure the RTC is operating in a safe, sound, and equitable manner, I must stress the importance of consistent policy and guidelines and the implementation of reasonable mechanisms to ensure this.

Therefore, this subcommittee is requesting a monthly status report on the implementation of all 1993 management reforms and the specific details of the sale of each of the remaining 63 institutions. I would like an analysis of all bids and awards included in the documentation of these institutions. This subcommittee will be carefully monitoring the effectiveness of the implementation of the reforms and the efforts made by the senior Treasury and RTC executives to make certain that those charged with the task of implementing these reforms on a day-by-day basis are doing so as was intended by law.

The RTC is scheduled to terminate its operations on December 31, 1995, and the window of opportunity for minority and women-owned businesses is closing. Last March 23, I was pleased to welcome Roger Altman as interim Chief Executive Officer of the RTC. At that time I thought that I made it very clear in my opening statement that there has to be a commitment to minority, women, and small business participation from the top down for the RTC to function in accordance with law. Further, I believed that the new administration needed time to implement those changes particularly as it related to diversity within the RTC.

However, here we are 1 year later and the RTC appears to be operating in a business-as-usual atmosphere without fear of reprisal. This must stop. And the RTC must increase contracting opportunities for MWOBs and MWOLFs in the management and disposition of RTC's remaining assets in business and legal services contracts, asset purchases, including investor funds, and the acquisition of thrift institutions.

As chairman of the subcommittee, I believe that there is a direct correlation between effective implementation of these rules and increased opportunities for all qualified contractors and acquirers. It

is imperative that those at the top recognize that we will be unable to successfully implement reforms in these final months unless we integrate and diversify the RTC's work force, particularly those positions charged with impacting policy and performance. The subcommittee will also continue to monitor the employment practices of this agency as it considers its transition into the FDIC.

At this time, I certainly would like to welcome the witnesses, hear from the other Members of the Congress who wish at this time to be recognized for their opening statements, and to that end I recognize my college from New York, Ms. Nydia Velazquez.

[The prepared statement of Chairman Flake can be found in the appendix.]

Ms. VELAZQUEZ. Thank you, Mr. Chairman, and good morning to our witnesses. I commend the chairman for his continuing scrutiny over an issue of great importance to our Nation—increased economic opportunity for minority and women-owned businesses.

Greater diversity in the financial services industry spurs economic development in predominantly minority neighborhoods and creates more jobs for people of color and women. Perhaps most importantly, minority and women outreach programs like the one before us help to ensure that we no longer squander the immense talent and energy of our people. In the end, all Americans benefit.

Unfortunately minority and women involvement in RTC activities has been and remains a problem. Only about 10 percent of minority and women-owned businesses are currently participating. We must do better. The RTC must maximize economic opportunities for minority and women-owned businesses and institutions in the remaining 18 months of its charter.

I look forward to hearing from Mr. Ryan and his colleagues on the RTC's outreach to minority and women-owned businesses over the past year and their plans for increasing minority and women participation in the coming 18 months.

Thank you, Mr. Chairman.

Chairman FLAKE. Thank you very much, Ms. Velazquez.

[The prepared statement of Ms. Velazquez can be found in the appendix.]

Chairman FLAKE. I would ask unanimous consent to have any other written statements and/or questions read into the record, without objection.

At this time, we would like to present the witnesses for today's hearing: John Ryan, who is the Deputy Chief Executive Officer of the Resolution Trust Corporation; Johnnie B. Booker, Vice President and Director of Minority and Women's Programs, Resolution Trust Corporation; J. Paul Ramey, Vice President and Director of Resolutions; and Ellen Kulka, who is Senior Vice President and General Counsel at RTC.

Good morning and welcome to the subcommittee. And Mr. Ryan, I suppose you will be beginning and either speaking for the whole or in part for this body. You may proceed either with your written testimony or you may summarize, if you so choose.

STATEMENT OF JOHN RYAN, DEPUTY CHIEF EXECUTIVE OFFICER, RESOLUTION TRUST CORPORATION; ACCOMPANIED BY JOHNNIE B. BOOKER, VICE PRESIDENT AND DIRECTOR OF MINORITY AND WOMEN'S PROGRAMS; J. PAUL RAMEY, VICE PRESIDENT AND DIRECTOR OF RESOLUTIONS; AND ELLEN KULKA, SENIOR VICE PRESIDENT AND GENERAL COUNSEL

Mr. RYAN. Mr. Chairman, I would like to summarize my testimony and ask that the full text be incorporated into the record.

Chairman FLAKE. You may do so by unanimous consent. And without objection.

Mr. RYAN. Good morning, Mr. Chairman, and members of the subcommittee. This is my first appearance before the subcommittee since being appointed Deputy Chief Executive Officer of the RTC in early January.

I would like to thank the chairman and members of the subcommittee for their efforts in securing, helping secure funding for the RTC. With your help, the RTC Completion Act was enacted last December and the RTC will now be able to complete its mission, close its doors, and bring the S&L cleanup to a close.

We are here today to address the reforms found in section 3 of the RTC Completion Act that provide minority and women-owned businesses and minority and women-owned law firms with enhanced opportunities to do business with the RTC and provide minorities with enhanced opportunities to acquire institutions from the RTC.

I am pleased to report on the record we have built and the steps we have taken to provide opportunities for minority and women-owned businesses at the RTC. Some of the steps we have taken include: First, to demonstrate the RTC's commitment, the Minority and Women's Program was moved up in the organizational structure to the division level. Its manager was made full vice president, serves on the executive committee, and reports directly to the CEO.

Second, the Minority and Women Program Division is now fully involved in the contracting process, particularly participating in virtually every phase of contract operations, including presolicitation, solicitation, evaluation, selection, contract administration, and postaward activity.

The record demonstrates the effectiveness of these actions. Of the $3.7 billion awarded in nonlegal contract fees since its inception, $786 million, or 21 percent, has been awarded to minority and women-owned businesses. Nonminority women have received 11 percent of total fees and ethnic minorities have received 10 percent.

In 1993, RTC paid nonlegal fees of $500 million, with minority and women-owned businesses receiving $155 million, or 31 percent. Nonminority women received 11 percent of total fees and ethnic minorities received 20 percent. That 20 percent represents an increase from 14 percent in 1992.

The RTC has continued its efforts to encourage the use of minority and women-owned law firms. Between January and May 1993, the RTC conducted symposiums in each of its regions to identify new minority and women-owned law firms. By yearend, we had identified 1,083 such firms and put them on the RTC's list of counsel, and that compares to 771 such firms that were on that list a year before. Last year, minority and women-owned law firms re-

ceived $54 million or 13 percent of all legal fees from the RTC, which represents a significant increase over the $38 million, or 10 percent paid in 1992.

Significant minority participation has also occurred in the RTC's asset disposition sales initiative over the past year. At the RTC's nonperforming loan auction in August of last year, 14 percent of the registered bidders identified their firms as either minority or women owned. In its judgments, delinquencies, and chargeoffs initiatives, about 80 percent of the bidders had minority or women-owned business equity or minority and women-owned business subcontracting participation.

In the Affordable Housing Disposition Program, approximately 40 percent of the buyers at recent sales events were minorities and 74 percent were first-time buyers.

Mr. Chairman, let me turn now to the newly enacted RTC Completion Act and its provisions to provide enhanced opportunities for minority and women-owned businesses and minority and women-owned law firms.

I want to be clear about the approach we are taking. We fully support the inclusion of minorities and women in all aspects of the RTC work, from contracting, to asset sales, to resolutions, to employment. Whenever possible, we have and will interpret minority preference provisions as expansively as possible within both the letter and spirit of the law while at the same time balancing the mandate to do our job at the least possible cost to the taxpayers.

The RTC Completion Act requires the RTC to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of minority and women-owned businesses and minority and women-owned law firms that comprise 5 percent or more of all certified minority and women-owned businesses and minority and women-owned law firms. These subgroups include such minority groups as blacks, Hispanics, Asians, and nonminority women.

These guidelines will, of course, be applied prospectively. As the first step to developing such guidelines, the RTC is conducting an analysis comparing contracts and fees awarded to various minority and women-owned business subgroups in each RTC region and the Washington office so that underrepresented subgroups can be identified.

The RTC's interim final rule, Rule on Minority and Women Outreach and Contracting Programs was published in the *Federal Register* on August 10, 1992, and is currently in effect. To incorporate the RTC Completion Act requirements, the RTC is in the process of preparing a new interim final rule. The new interim final rule will incorporate parity guidelines for all future contracts, including legal contracting. These guidelines will also be reflected in an upcoming revision to the Contract Policy and Procedures Manual.

The RTC currently awards bonus points on both the technical portion and cost portion of contract evaluations to minority and women-owned businesses or firms with substantial minority and women-owned business participation. To augment this policy, the RTC Completion Act requires the RTC to establish a goal for mandatory minority and women-owned business subcontracting for all contracts equal to or greater than $500,000 with certain exceptions.

The new interim final rule on Minority and Women Outreach and Contracting Programs will provide the following:

First, 10 percent participation, subcontracting participation, for nonminority and women-owned business prime contractors and minority and women-owned business joint ventures with less than 50 percent prime contracting participation; 5 percent for minority and women-owned business firms or joint ventures with 50 percent or more of minority and women-owned prime contracting participation.

The RTC Completion Act also requires a review of our contracting policies and guidelines as regards their effect on minority contractors. All solicitations for new contracts and renewals of existing contracts undergo, on a continuing basis, an extensive review to identify any inadvertent exclusionary language. The RTC will also review existing lists of eligible contractors to ensure maximum participation by minority and women-owned businesses.

I turn now, Mr. Chairman, to the minority acquisition of financial institutions that you referred to in your opening remarks. FIRREA provided certain preferences to minority acquirers in the acquisition of failed minority institutions.

The Completion Act further enhanced the opportunities the RTC can provide to minority acquirers by requiring the RTC to give preference to an offer of a minority bidder over any other offer that results in the same cost to the RTC for any institution or branch located in a predominantly minority neighborhood.

We have been working diligently on definitions and procedures to be used to implement this provision while mindful of two basic requirements imposed on the RTC. One, that minority acquirers be given a meaningful preference, and, two, that the preference be consistent with the resolution of the institution at the least cost to the taxpayer.

On February 24, 1994, the RTC published in the *Federal Register* an interim rule that defined "predominantly minority neighborhood" as any postal Zip Code in which 50 percent or more of the residents are minorities unless other reliable data indicate otherwise.

On February 28, we issued a directive that defined a predominantly minority neighborhood institution as an institution whose home office is located in a predominantly minority neighborhood or that has 50 percent or more of its branches located in a predominantly minority neighborhood.

We believe this definition of an institution is consistent with the intent of Congress to create real opportunities for minority acquirers of failed institutions. Based solely on the Zip Code areas, 10 of RTC's current conservatorship institutions meet this definition. Collectively, those 10 institutions have 122 offices and hold $3.5 billion in total deposits. In addition, there are another 35 offices of 11 other institutions with over $900 million in deposits that are located in predominantly minority neighborhoods. All told, about $4.3 billion in deposits or roughly one-quarter of total deposits held by RTC conservatorships will come under the minority preference provisions.

The RTC directive also establishes bidding procedures for institutions or branches in predominantly minority neighborhoods, allow-

ing a minority bidder as well as the high majority bidder to submit best and final bids in cases where the minority bid is within 10 percent of the high majority bid.

Mr. Chairman, we believe that this bidding procedure will give minority bidders a meaningful preference while still maximizing returns to the taxpayers.

RTC policy also provides that minority bidders for institutions or branches in predominantly minority neighborhoods are to be offered interim capital assistance for up to two-thirds of required regulatory capital.

This assistance may include up to two-thirds of any premium paid by the acquirer and, Mr. Chairman, that is new, that is a new policy on the part of the RTC, provided that the total amount of the interim capital assistance does not exceed the tangible equity of the institution.

It is important to note that this will increase the amount of the capital assistance that may be provided by the RTC by as much as 50 percent over what was provided before.

As in existing minority acquisition programs, we will continue to make earning assets available to minority acquirers of institutions and branches in predominantly minority neighborhoods in order to augment their operating income.

In order to provide additional flexibility in asset selections, minority acquirers will have an option to acquire assets at market value up to 100 percent of net deposits to be selected from a pool equal to 110 percent of net deposits.

All told, the RTC is holding approximately $3 billion in residential mortgages for possible transfer to minority acquirers.

Finally, both to aid minority acquirers and to promote banking services in predominantly minority neighborhoods, the RTC may offer minority acquirers rent-free occupancy of branch offices owned by the failed institutions located within a predominantly minority neighborhood for a period of up to 5 years.

In conclusion, the RTC stands committed to expanding opportunities for minorities and women, and to fully implementing all aspects of the RTC Completion Act.

I would like to make one observation, Mr. Chairman. As I said at the outset, I arrived here early January of this year. In preparing for this testimony and going over the numbers, I think it is clear to any observer that the commitment to the Minority and Women-owned Program has resulted in some good results, particularly over the last 2 years. I think in large part the credit for that goes to the lady on my left, Johnnie B. Booker, who has headed up that program and has—and is largely responsible for those results and it has not been an easy task and she deserves, I think, a lot of the credit for what we see here today. Thank you.

[The prepared statement of Mr. John Ryan can be found in the appendix.]

Chairman FLAKE. Thank you very much, Mr. Ryan.

And I certainly will join you in the excellent relationship that my staff has had with Ms. Booker and others in RTC. And overall I think that your staff will indicate that I was the first Congressman to come there, been there a few times so that I am not an adversary of the RTC. I am an adversary of practices that are not con-

sistent and compatible to a level of full participation by all individuals who ought to have access and opportunities made available to them.

Let me just ask several questions.

Mr. Wynn, good morning. I am happy to see you.

Mr. WYNN. Mr. Chairman. Thank you.

Chairman FLAKE. Albert Wynn has joined us from Maryland representing the Prince Georges County area.

I look with interest at particularly your testimony from page 13 through page 15, and certainly it gives indication that on paper that there clearly is a movement in terms of trying to deal with predominantly minority neighborhoods, branches in those neighborhoods or banks in those neighborhoods, trying to address how we might be able to assure that those branches get into the hands of those individuals who have the capability and competency with the balancing of soundness and safety and costs and all of that.

The problem is that no matter what is written, you cannot write in attitudinal kind of questions and the issue becomes up and down the structure to guarantee that persons within RTC have a clear understanding beyond that which is written, that their attitudinal approaches, their sense of what they think is appropriate for a minority versus what in fact ought to be a determination based on the ability of the person to be able to manage the bank well, to get it back into the marketplace, to make it productive, and do all the things that any other business person would.

And I guess at the first offering of guidelines, obviously, our offices, most of the Black Caucus Members that I have spoken to, were just inundated with calls because there was not a problem of what is on paper. The problem seemed to have been either misinterpretation or some what I call "historical attitudes" that suggested a continuation of traditional old boy network kind of approaches which even raised the questions in some minds with persons knowing that an agency is going out of business in a year or so are they now preparing to pass along to individuals certain assets so that those persons will be empowered and to the point of their departure from RTC be able to become a part of those operations.

I realize that this, you know, is conjecture, but at the same time there is enough—I tend to think perhaps not anecdotal evidence nor data, but enough of a reaction to suggest that something is wrong beyond what is put on the paper in terms of people making other kinds of definitions.

So my concern, for instance, on page 13, if you will look, you have given a general directive of definitions of institutions and predominantly minority neighborhoods as, one, an institution whose home office is located in a PMN or an institution with 50 percent of its branches in PMNs.

Now, for one sitting and making an interpretation in terms of how you determine whether or not the person making that location for the branches based on home office location is inclusive of any branches outside of that particular address seems to be an area where there seems to be a lack of understanding on the part of some persons within the structure to the degree that, say, if I came in and I said, I want to buy in—I want to buy a branch whose ad-

dress is in downtown Manhattan, and I find that predominantly minority neighborhood is defined as Harlem and Bed-Stuy and South Bronx and Queens, where I am, but there are also some branches that happen to be in Westchester County.

Now, would one interpret that I am only eligible because I am an African-American to purchase the branches that are a part of those defined communities within the scope of the city as PMNs or would I also be eligible to have included in the package those branches that are in Westchester County even though they are not predominately minority neighborhoods; they are part of a bank whose address is in a predominantly minority neighborhood? What interpretation can you give me on that?

Mr. RYAN. That was an important issue that we considered when we devised these implementing guidelines. There was a concern that from a viability perspective it made no sense to look at an institution solely as those institutions that were located in a predominantly minority neighborhood. In many cases, the investors couldn't get the financing to purchase those institutions that were so restricted, so we tried to be as inclusive as we could within the spirit of the law.

So what we have said, in effect, is if 50 percent or more of the branches of an institution are located in a predominantly minority neighborhood, the whole institution including the other banks in Westchester County or wherever are also included as part of the institution as a whole.

We have also said that for the purchases of the home office. The home office is located in a predominantly minority neighborhood if the operations of the bank are directed from that home office and if that home office does a banking business, then the whole institution, including the branches in the more affluent areas or a majority area are also included.

Chairman FLAKE. Whether they exceed 50 percent or not?

Mr. RYAN. Whether they exceed 50 percent or not.

Chairman FLAKE. So that if I had a branch in four boroughs in New York City, and I had the opportunity as a part of that bank to have another 12 banks that are in Westchester County which are not PMNs then I would not be precluded from purchasing the whole package?

Mr. RYAN. If the headquarters is in a predominately——

Chairman FLAKE. It is in South Queens. If it is, I get South Bronx. I get Bed-Stuy and I get Harlem. That is 4 branches and I get the 12 branches in Westchester County even though they are in the predominately minority neighborhoods? Is that a correct interpretation?

Mr. RYAN. That is correct.

Chairman FLAKE. I—just to be clear.

Mr. RYAN. That is right.

Chairman FLAKE. And that is what you are giving as guidelines, as directives for all of the persons within the structure of RTC and their understanding of what their interpretation ought to be regardless of whether the person trying to buy the branch is African-American, Hispanic, women, regardless what race that person happens to be?

Mr. RYAN. That is correct. And we have included a list of those institutions that we have identified as being located in a predominantly minority neighborhood.

We will entertain suggestions if someone wants to make a case that a different—additional institutions or branches ought to be included. We will entertain their arguments and listen to their points of view and make a decision as to whether those branches ought to be included.

Chairman FLAKE. Correct. But we will not separate off the minority institutions just because the buyer is minority?

Mr. RYAN. Not necessarily but we will offer the branches separately, too, as well. The minority branches will be bid——

Chairman FLAKE. You can either get them separately or you can buy the whole bank?

Mr. RYAN. That is correct.

Chairman FLAKE. If you have the resources to do so.

Mr. RYAN. That is correct.

Chairman FLAKE. And the RTC will not make an arbitrary decision, then, that they must be separated if that person makes the offer for the whole package?

Mr. RYAN. That is correct.

Chairman FLAKE. Ms. Velazquez.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. I just would like to ask Mr. Ryan if you can tell us why Mr. Altman wasn't able to make it today.

Mr. RYAN. My understanding is that he has another commitment that he has to be present for. And was unable to attend.

Ms. VELAZQUEZ. So that other commitment was more important than being here today.

Mr. RYAN. I assume so.

Ms. VELAZQUEZ. Mr. Ryan, based on the RTC's definition of—did you hear that? —predominantly minority neighborhood, how many of the 63 remaining institutions or branches will qualify?

Mr. RYAN. We will have 10 institutions that will meet the institutional definition with 122 offices. They hold $3.5 billion in deposits. In addition, there are 35 branches of 11 other institutions that hold $900 million. All told, it is $4.3 billion in deposits, or about 25 percent of the deposits held by our current conservatorships.

Ms. VELAZQUEZ. We have received several reports from minority contractors and potential acquirers that would indicate at least some inconsistency in terms of field implementation of MWOB Program requirements and outreach. How do you propose to remedy this lack of coordination in the last 22 months?

Mr. RYAN. If you could provide me with some specific examples of the kinds of problems that you are referring to, we would be happy to address them and provide you answers for the record.

Ms. VELAZQUEZ. I will so make those in writing and I expect a response.

Mr. RYAN. Sure.

Ms. VELAZQUEZ. Thank you, Mr. Chairman.

Chairman FLAKE. Thank you very much.

Mr. Wynn.

Mr. WYNN. Thank you, Mr. Chairman.

Good morning, Mr. Ryan.

Mr. RYAN. Good morning.

Mr. WYNN. Mr. Ryan, on page 13 of your testimony, you talk about the minority preference and what you seem to indicate is that if a minority bidder is within 10 percent of the high bid by a majority bidder, that both the minority bidder and the high bidder would then be offered the option to rebid.

Mr. RYAN. That is correct.

Mr. WYNN. It would seem to me that a true preference would say that if the minority bidder were within 10 percent of the high bid, that he—if he could match the high bid that he would be given the preference, a more direct route. Because what you have set up, a scheme in which the minority bidder who is already above the high bidder is placed at a significant disadvantage with the rebid process. I don't believe that is a true preference.

Mr. RYAN. If the minority bidder wins, they win.

Mr. WYNN. I understand if they win, they win. But the issue, as stated in your testimony, if the minority bidder is within 10 percent of the bid——

Mr. RYAN. If he is under 10 percent.

Mr. WYNN. Under 10 percent, excuse me. He then goes into a second round, so to speak, of competition.

Mr. RYAN. That is correct.

Mr. WYNN. With the majority bidder.

Mr. RYAN. Let me say that this has been one of the most difficult aspects of this policy to deal with given the legislation that we were operating under. I mean, the legislation said we were to give a preference. But the legislation also said we had to get the least cost solution for the taxpayers. A very difficult line to walk.

We considered the match bidding, that we would hold a bid, pick the winner and then show the bid to the minority, the closest minority, and let them match it.

The problem we have with that is we don't think we could certify that we necessarily got the least cost solution if we did that, because we believe that if we use serious bidders as, in effect, stalking horses, that they would not want to incur the expense of doing the due diligence, the expense of preparing a bid, if they knew that there was, in effect, a right of first refusal waiting out there behind them.

So we selected this process because there is some precedent in other laws that have such a scheme of rebidding and to my knowledge, there has not been a serious chilling effect on the bidding process as a result of this kind of an approach where we do believe there would be if a matched bid approach were used.

Mr. WYNN. OK. Mr. Ryan, who made that decision?

Mr. RYAN. I suppose I did. With the input from the executive committee. And the other senior officers that were present providing input.

Mr. WYNN. Are you willing to revisit that decision?

Mr. RYAN. I always would be willing to consider any new facts, new circumstances, new——

Mr. WYNN. I guess my concern is I am not sure you had any evidence of a chilling effect when you made a decision to rule out a match process.

Mr. RYAN. I think it is intuitive.

Mr. WYNN. It could be equally intuitive that a match process would encourage bidders to come in even lower or higher, encourage people to come in higher with the realization that they were competing in a preference context, in the context of a preference.

They are actually bidding on a property, institution, excuse me, in a minority community. They understand that. If they say, well, we want nonetheless to acquire this, then they should come in higher. I think this decision ought to be revisited because I think this is really a very, very serious flaw in terms of trying to accomplish the objectives we have described, and I would like to engage in further discussion with you.

The second question I have is if you have two bids and, let's say, they are in fact comparable but one is straight cash and the minority bidder offers a bid that includes financing, how do you treat that? Do you still award the minority preference?

Mr. RYAN. Yes.

Mr. WYNN. So there is no——

Mr. RYAN. There is no discounting of the bid because of the financing.

Mr. WYNN. OK. All right. That is certainly helpful.

The other question is all of the subjective elements in analyzing a bid. How do we address the concern that we in the minority community have that these subjective elements can lead to the downgrading or discounting of a bid or rather the downgrading of a bid based on subjective elements, the management experience, these types of——

Mr. RYAN. Let me ask Mr. Ramey who has gone through this process to respond.

Mr. RAMEY. First of all, I am not clear on what you mean by subjective elements, because our analysis is based strictly upon cost. It is strictly upon an evaluation of assets of the institution, what it would cost to pay the institution off, and then we strictly evaluate bids on a cost analysis. It is dollar for dollar.

We also do not discount the interim capital assistance. That is considered a no cost part of the transaction. The sale of loans at market value is not.

Mr. WYNN. So you do not make considerations for management experience and those kinds of things?

Mr. RAMEY. Management experience and the business plan and so forth are addressed by the regulators. We must defer to them on that, the chartering.

Mr. WYNN. So they could make the decision. So even if the bids from a purely numerical stance were comparable, that for other subjective reasons they would reject a bid by a minority bidder.

Mr. RAMEY. The regulators do not have an ability to reject a bid. We do not even discuss the amounts of the bids with the regulators. From their standpoint, their analysis is based upon the management of the institution, their financial capacity, their business plan, and so forth in awarding both a charter and FDIC insurance. All we request of the bidder is to have them obtain a charter and FDIC insurance. We think we have come a long way with the interim capital assistance and also financing part of the premium.

Mr. WYNN. How does that work, by the way, the interim capital assistance?

Mr. RAMEY. I will just use an example. Let's assume, and I won't speak for the regulators, let's assume we have a $100 million institution and the regulators require 6 percent capital. So the acquirer, any acquirer would have to put $6 million of their own financing or money into that institution. We are willing to finance up to two-thirds of that. In other words——

Mr. WYNN. To refinance?

Mr. RAMEY. We would put up $4 million of that for no less than 2 years and we will entertain now, which is another revision, up to 5 years.

Additionally, if there is a premium bid, which there should be, we will now finance up to two-thirds of that premium but in no case, as Mr. Ryan said, to go over the total capitalization of the institution.

Mr. WYNN. Mr. Chairman, if I could have one more question?

Chairman FLAKE. Yes.

Mr. WYNN. Mr. Ryan, you talked earlier about the mandatory subcontracting requirements for professional services. Exactly how many, how many contracts have you awarded to minorities? Compared with prior to the new legislation.

Mr. RYAN. Johnnie has the number of the——

Ms. BOOKER. From 1989 to 1993, we have awarded—you mean only to ethnic minorities during that period, we awarded 10.1. That is cumulative. For the last——

Mr. WYNN. 10.1.

Ms. BOOKER. Percent.

Mr. RYAN. You want the actual numbers?

Ms. BOOKER. In——

Mr. WYNN. The actual amount.

Ms. BOOKER. The actual $384 million estimated fees, I am sorry, $387 million. In estimated fees, $387 million.

Mr. RYAN. That was from 1989 to 1993.

Ms. BOOKER. That was from 1989 to 1993. That is the total.

Now, if you look at last year, just last year, with ethnic minorities, all minorities received $101.3 million, which totaled 20.2 percent. That was for 1993.

Mr. WYNN. Does this also include white females?

Ms. BOOKER. No, that is ethnic minorities.

Mr. WYNN. Mr. Chairman, I would like to ask unanimous consent to submit additional questions in writing.

Chairman FLAKE. Without objection.

Thank you very much.

Mr. WYNN. Thank you.

Chairman FLAKE. I want to recognize Mr. Watt from North Carolina.

Mr. WATT. Thank you, Mr. Chairman. I am an interloper here and if, since Mr. Roth is a member of the subcommittee, I would not be offended, even though you were deferring to a Republican here, as long as he doesn't ask about Whitewater today and get us all caught up in that.

Chairman FLAKE. I won't do that today. And I have been at a prayer meeting and we know what the rules are and the guidelines.

Mr. WATT. I would be happy to defer to the subcommittee member, if that is his preference and yours.

Chairman FLAKE. All right. Thank you very much.

Mr. Roth.

Mr. ROTH. Well, Mr. Watt, you are most gracious and I wasn't going to ask a thing about Whitewater this morning.

Mr. WATT. Good.

Mr. ROTH. But, Mr. Chairman and members, I want to say that I wish I could have been here from the very beginning, but our national commander of the DAV is from my district, Mr. Chairman, and members, of Green Bay, Wisconsin. I had to introduce him and it was a great honor for me to do and he brought those veterans.

Chairman FLAKE. Not long enough sometimes.

Mr. ROTH. So I am somewhat late here. But, Mr. Chairman, I know you to be a fair man.

Chairman FLAKE. Thank you, sir.

Mr. ROTH. I happen to be the only member of the opposite party here, and I am not here as a partisan, but I must say that I am most disappointed that Mr. Altman is not here this morning. I mean, when I read in the newspapers about the briefing he gave at the White House, this is most inappropriate when you have it attended by Mr. Nussbaum——

Chairman FLAKE. Was that briefing on minority and women-owned businesses?

Mr. ROTH. Hillary Rodham's Deputy Chief of Staff, Margaret Williams, to go to the White House and give them a heads-up briefing on this, Mr. Chairman, is totally out of bounds.

Chairman FLAKE. And you know, we are going to have a hearing on that. I think it is the 24th.

Mr. ROTH. When has this thing been set for——

Chairman FLAKE. It is set for the 24th, and I think that is where we ought to codify all of the data and be prepared, because I think that is an opportunity, and I understand that the Republicans will be inviting their witnesses, and I think that is the appropriate place.

Mr. ROTH. But, Mr. Chairman, it is not a matter of party politics, it is a matter of the taxpayers of this country.

Chairman FLAKE. And some of those taxpayers are minority and women who have not been treated fairly, and I would rather not——

Mr. ROTH. Mr. Chairman, if you will allow me just to——

Chairman FLAKE. To deal with that——

Mr. ROTH. Mr. Chairman, if you will allow me just to make this statement.

Chairman FLAKE. I will let you make a statement.

Mr. ROTH. It is imperative that this is said. This issue has been swept under the rug too long.

Chairman FLAKE. I am not trying to sweep it under the rug.

Mr. ROTH. This is a very serious situation.

Chairman FLAKE. Let me assure you that the issue of minority and women who have not had full participation rights in the economic development of this country and full participation is equally as important.

Now, I don't have a problem dealing with the Whitewater question at the appropriate place and time. I have called the hearing this morning to deal with an issue within RTC, which is an institution that will be out of business in about 22 months. My concern now is for a class of people that have been mistreated in this country forever.

The good old white boys and white girls who are a part of Whitewater, and every other one of the institutions that are a part of the S&L, that is you all's business. Today's business has to do with women and minority-owned businesses. And that is where I am going to focus the hearing. That is what we are going to deal with. And on March 24, I will be there so that we might be able to share on the Whitewater hearing.

Mr. ROTH. Thank you, Mr. Chairman. I think I have been gracious in allowing you to make your statement on my time.

Chairman FLAKE. It works the other way, too.

Mr. ROTH. Let me just say that I consider this extremely serious. In our previous hearing you said to me, we will have an appropriate time for those kind of questions. That was weeks ago. Now these questions will come up later on. Yet, I see on the front page of *The Post*, which is certainly not a conservative newspaper, talking about Mr. Hubbell being investigated by his own law firm, whether he was overbilling the people at Madison Guaranty Savings and Loan. That savings and loan, Mr. Chairman, and members, cost the American taxpayers $60 million.

Mr. WYNN. Point of order, Mr. Chairman.

Mr. ROTH. When, Mr. Chairman, are we going to start asking some questions?

Chairman FLAKE. When we have a hearing on that matter.

Mr. ROTH. The American people lost billions of dollars in the S&L cleanup.

Mr. WYNN. Point of order, Mr. Chairman.

Chairman FLAKE. And African-Americans have been losing since the last century. It is time for us to deal with that issue.

Mr. ROTH. It is about time that we ask some questions.

Mr. Chairman, if I could be permitted to make a statement. I didn't interrupt you. How about letting me make a statement?

Chairman FLAKE. I will if you will speak to issues germane to this hearing, sir.

Mr. ROTH. I am speaking to issues germane that——

Chairman FLAKE. Minorities——

Mr. ROTH. Mr. Altman was asked to be before this subcommittee. He didn't show up. What is he hiding from us?

Chairman FLAKE. He is not——

Mr. ROTH. You have been shielding his people now for months.

Chairman FLAKE. No, I have not.

Mr. ROTH. It is time that the American people had the truth.

Chairman FLAKE. No, it is the full committee—the full committee has consented that it would hold a hearing.

Mr. ROTH. This is being swept under the rug. The newspapers around the country are screaming about it in headlines.

And the majority, you have ruled this House of Representatives 40 continuous years, will not allow these questions to be asked.

Chairman FLAKE. You are out of order.

Mr. ROTH. There are serious—I am not out of order. I am totally in order, Mr. Chairman.

Chairman FLAKE. You are out of order.

Mr. ROTH. I am in——

Chairman FLAKE. I recognize Mr. Watt, if you are not going to ask a question relative to women and minority-owned businesses. I will recognize Mr. Watt.

Mr. ROTH. Mr. Chairman, it is a serious situation. It——

Chairman FLAKE. This is equally as serious.

Mr. ROTH. The head of RTC goes to the White House and has a meeting with key people at the White House and gives them a heads-up briefing when you have an investigation as huge as Whitewater. This is a serious situation, Mr. Chairman, and——

Chairman FLAKE. Your time has expired, Mr. Roth.

Mr. ROTH. I am going to ask you again to have a hearing to allow the American people to know the truth. What are you afraid of, what are you and the majority party afraid of?

Chairman FLAKE. I am afraid of nothing. I may be a part of a majority party, but I am a part of a minority race that is suffering because all too often your issues get in the way of letting us bring to full circle those issues that are important to all citizens. There are some who have been discriminated against, and I do think you understand that.

Mr. Watt, you are recognized.

Mr. WATT. Thank you, Mr. Chairman. Did I set that off?

Chairman FLAKE. It would appear, but that is OK. He and I have an understanding.

Mr. WATT. I didn't intend to and if I was responsible for mentioning that unseemingly word in setting that off, I apologize to the chairman and the subcommittee.

I wanted to ask a few questions about the statistics that appear in your statement. Mr. Ryan, on page 3 and page 5, and I want to go at it a little more from the qualitative part of this rather than from the quantitative part. As I understand the statistics that we have there, you are awarding 33 percent of the contracts to minority and women's businesses; is that correct?

Mr. RYAN. Correct.

Mr. WATT. Yet, you are paying many only 21 percent of the fees that you are expending to minority and women enterprises.

Could I surmise from that that the quality of the contracts that you are awarding to minority contractors is substantially different than the quality of the contracts you are awarding to nonminorities or am I just—or should I read that minorities are a lot more efficient in their billing practices and get the job done a lot cheaper for the American people?

Mr. RYAN. I think it is probably—I think you can infer from this that some of the contracts let to minority and women-owned businesses are smaller than those let to nonminority firms. However, I can attest that recently there have been some rather significant joint venture contracts let where minority and women-owned businesses were major participants in those contracts. We are seeing larger and more important contracts being let to joint ventures with minority and women-owned businesses.

Mr. WATT. Are you all still following the policy that minority contractors must have a big brother to give them credibility as you were when I was in private practice?

Mr. RYAN. Not at all. No, sir. Not at all. We have some——

Mr. WATT. Then why is there the necessity for you to talk primarily about joint ventures?

Mr. RYAN. The one——

Mr. WATT. Isn't that a mentor-mentee kind of relationship that RTC is setting up there where essentially what you are saying is you don't feel comfortable with minorities doing the work unless they have a mentor involved in the joint venture with them?

Mr. RYAN. No, I don't think that is a fair inference at all. I think that some of the major contracts that we have let recently have had joint venture participation by minority and women-owned businesses because they have been very large contracts.

Then we have other contracts that are let to prime contractors that are minority and women-owned businesses that are large as well. We have no view as to whether one group is more qualified than another. We look at each contract on its individual basis and we look at the expertise and we provide technical advantages for some minority and women-owned firms. We do not encourage joint ventures, but it seems to be a good way for some minority firms to get some of these contracts, frankly.

Mr. WATT. Mr. Ryan, if I didn't know better, I would, from personal experience, I would say what you said sounds good, but I mean I was with a law firm that had been in existence for over 30 years that had taken more cases to the U.S. Supreme Court than any major white law firm in this country, and RTC was still saying to us that we needed a mentor to go into court and litigate a case, and I think that is inexcusable if that is the mentality that this agency continues to have and I will let that go.

Let me go on to page 5 where it seems to me that the disparity is even greater. You have a 33 percent award on nonlegal work and 21 percent of the fees, yet in the legal area, you have 35 percent of the total firms on your list, minority firms as I understand these statistics, yet you are paying only 13 percent of legal fees to minority firms. Is that—do I understand these figures correctly?

Mr. RYAN. That is correct.

Mr. WATT. Tell me, if you would, what accounts for—I mean, how could you have 35 percent of your available list be minorities and be paying only 13 percent of the fees to minorities?

Ms. KULKA. Mr. Watt, perhaps I can respond. As you may know, I am very recently on board at the RTC having become general counsel in the middle of January and this is an area of interest to me, and attention—and I have been through some analyses—and more, of course, attention will be paid to this. But as I understand the numbers, while we have a 33 percent referral of all matters in 1993 to minority firms, we are reflecting when we look at fees actually paid, fees paid not only on those specific new referrals, but fees paid in 1993 on legal work that has been awarded in prior years and that continues into 1993. So that you see the statistics that are presented reflect for all fees paid, those paid not only on the 1993 referrals, but on all fees paid to all law firms, and I think we may be able to give you some more detail with respect to the percentage

of fees that are paid on these referrals that match with the year in which they are referred and we will try to provide that, if you would like.

[The information referred to can be found in the appendix.]

Mr. WATT. And if I follow that analysis carefully, I should see in 1994 and 1995, 1996, 33, 34 percent of the contracts being awarded and 50 percent of the fees being paid to minorities. You think that is going to happen?

Ms. KULKA. I absolutely do not think that will happen and I do think when you have a cumulative number you are always working with a large base which I understand in the early years did not reflect any meaningful participation of minorities and women, and that is something that has been addressed, and I believe that Ms. Booker's efforts have resulted in a substantial increase of participation in 1993. And while that will be reflected, it is my belief an increased percentage of fees in 1994 and 1995, I don't believe that will ever get to the percentages that you have indicated.

Mr. WATT. And when is it we anticipate RTC going out of business? We are going to get to some level of parity when we close down business? Is that——

Ms. KULKA. I think that the effort is there and it is something that I am committed to, as well as our Minority and Women's Program Office being committed to it, and to the extent that we are out there continuing to engage law firms, we will be seeking to engage minority and women law firms as meaningful participants in the process.

Of course, you understand that we also have a mandate to do as much work in-house as we can in a cost-effective manner. As we continue our process, there will be fewer opportunities for all law firms as we go forward toward our sunset and that will affect the contract letting as well.

Mr. WATT. So by the time we perfect this program, there won't be an outside program. You will be doing it all in-house and we will be arguing about something where the horse is out of the barn again, I guess.

I don't mean to sound like you are not making efforts, but did I understand you to say that 33 percent of the referrals that you are making now are to minority firms?

Ms. KULKA. It is my understanding that the referrals made in 1993 were 33 percent to minority-owned firms and 23 percent to women-owned law firms.

Mr. WATT. That is this 33 percent, which is inclusive of that 23 percent, not cumulative, because that would be a total of 56 percent going to minority and women.

Mr. RYAN. That is right.

Ms. KULKA. That is correct.

Mr. WATT. You are now telling me that 56 percent of the contracting that RTC is doing with lawyers is with minority and women?

Ms. KULKA. In 1993, that was the case.

Mr. WATT. And on a quantitative, qualitative basis, would the percentages of fees generated by those contracts be roughly equivalent to 56 percent?

Ms. KULKA. No, I don't believe they are, but I do believe there is substantial improvement in the percentage of fees against percentage of contracts compared to prior years, and I think we may be able to give you some more information on that.

Mr. WATT. And what would account for the fact that they would not be qualitatively roughly equivalent?

Ms. KULKA. I don't know what you mean, sir, by qualitative. If you are talking——

Mr. WATT. I am talking about the amount of fees that they generate. I assume much is based on the qualitative value of the contract that is awarded.

Ms. KULKA. I really don't——

Mr. WATT. Unless black lawyers are charging less fees than white lawyers.

Ms. KULKA. I really think I need to look at this more carefully so I can respond thoughtfully and not guess at it, and I would like the opportunity to do that.

[The information referred to can be found in the appendix.]

Mr. WATT. Thank you, Mr. Chairman.

Chairman FLAKE. Thank you very much, Mr. Watt.

Let me just ask a couple of questions. SAMDA contractors are ranged and rated with other SAMDA contractors. The evaluation criteria can be quantified with income to expense ratios, percentage of MWOB subcontracting, and so forth. Is it fair to use subjective criteria like attitude, responsiveness, cooperation, as it was done to evaluate some minority SAMDAs or as has been reported to us.

Mr. RYAN. We just don't know. We will have to respond for the record.

Chairman FLAKE. Would you please respond for the record.

[The information referred to can be found in the appendix.]

Let me ask if you would—you indicate on page 13 that there are 10 institutions and 35 branches of 11 other institutions which would qualify under the PMN definition. Would you mind submitting for the record for the subcommittee the names of those institutions?

Mr. RYAN. Certainly.

Chairman FLAKE. Thank you very much. And Mr. Roth, because he believes in diversity and fairness and inclusiveness, has some questions regarding women and minority-owned businesses.

Mr. ROTH. Thank you, Mr. Chairman, and, Mr. Ryan, you don't mind answering a few questions, do you?

Mr. RYAN. Not at all.

Mr. ROTH. Great. Have you talked with Mr. Altman about minority contracts?

Mr. RYAN. Certainly, I have.

Mr. ROTH. Have you ever discussed the Madison Whitewater with Mr. Altman?

Chairman FLAKE. You mean black water? Go on, Mr. Roth.

Mr. RYAN. Yes, I have.

Mr. ROTH. You have. Did you prepare Mr. Altman for the meeting with the White House officials?

Mr. RYAN. No, I didn't.

Mr. ROTH. You did not. Did Mr. Altman tell you he was going to the White House; did you ever discuss that with him?

Mr. RYAN. No, he didn't.

Mr. ROTH. Does the Rose law firm represent the RTC, the OTS, or the FDIC or any other Federal agency in any matter in litigation at the present time?

Mr. RYAN. I am not sure. I would have to check for the record and submit that.

[The information referred to can be found in the appendix.]

Chairman FLAKE. If the gentleman would suspend for just a minute. I won't stop you, but the witnesses must be informed you do not have to answer any questions that are not germane to the testimony you have submitted here. OK. You may continue.

Mr. ROTH. Thank you.

Does the RTC now conclude that conflicts of interest existed in Rose law firm activities in first representing Madison and related persons and subsidiaries and then turning against it to represent the government agencies, FDIC or the RTC?

Mr. RYAN. I think that in connection with the oversight hearings that were held before the Senate Banking Committee, that a copy of the RTC's report was submitted to that committee on that issue, and I don't have anything further to add.

Mr. ROTH. What is your opinion on that, sir?

Mr. RYAN. I don't think it is appropriate for me to express an opinion.

Mr. ROTH. Well, you are the Executive Deputy of a very, very important agency.

Mr. RYAN. That is correct.

Mr. ROTH. I think your opinion is very important.

Mr. RYAN. That is why it is important that I not express it prematurely or express an opinion that might damage either the civil or criminal action that might ultimately be taken.

Mr. ROTH. Knowing what the RTC knows now, would the RTC hire the Rose law firm if it had to do it all over again?

Mr. RYAN. I don't know.

Mr. ROTH. You don't know?

Mr. RYAN. I don't know. I can tell you that initially the Rose law firm was hired by the FDIC, which acted as a conservator during that period of time that FIRREA was being enacted.

Mr. ROTH. Have you talked to Mr. Altman since his meeting at the White House?

Mr. RYAN. Yes.

Mr. ROTH. What did he have to say now?

Mr. RYAN. I don't think it is appropriate for me to discuss my conversations with Mr. Altman.

Mr. ROTH. Well, do you think it is appropriate for the Congressman to ask those questions? After all, Madison Savings and Loan cost the taxpayers $60 million.

Mr. RYAN. I think it would be highly presumptuous of me to indicate what I thought Congress ought to do.

Mr. ROTH. Do you think that the Rose law firm overbilled RTC?

Mr. RYAN. I don't know.

Mr. ROTH. Have you looked at that?

Mr. RYAN. It is a matter that I assume is being looked at.

Mr. ROTH. I am sorry?

Mr. RYAN. It is a matter that in the context of everything else is being looked at.

Mr. ROTH. What does that mean? Can you translate that for me?

Mr. RYAN. No, I don't think it is appropriate for me to go beyond that.

Mr. ROTH. In other words, you won't answer the question.

Mr. RYAN. I think I did.

Mr. ROTH. Well, I didn't——

Mr. RYAN. I answered it to the degree that I think I am able to answer it given the current status of matters relating to that.

Mr. ROTH. What is the current status of matters?

Mr. RYAN. There is a special investigator that has been appointed by the Justice Department. There are matters that are being reviewed by the RTC related to possible recoveries on monies that the taxpayers paid in the resolution of Madison. And I am not——

Chairman FLAKE. Do you have a MWOBs question before your time expires?

Mr. ROTH. You know, Mr. Ryan, I am trying to be as kind as I can to you. What strikes me as being odd is that we have got Mr. Altman going down to the White House to give a heads-up briefing to the people at the White House, including Mrs. Clinton's Chief of Staff, and they give him a heads-up briefing and you can't come before Congress and be more forthcoming. That seems very strange to me.

Mr. RYAN. Mr. Chairman, I don't know that——

Chairman FLAKE. I have asked the witness to come.

Mr. RYAN. How much more of this we need to go through? This is not a matter that we came here prepared to discuss.

Mr. ROTH. We are here in a public hearing before a congressional committee. I think we have got every right. We have a duty to ask these questions.

Chairman FLAKE. Mr. Roth, I asked the witnesses to supply answers to particular questions for this hearing. And I think I have been very fair to you. I think I have been just in being judicious with the time, but I think that you have taken full advantage and I think you have—your time has expired.

Mr. ROTH. Well, Mr. Chairman, this is a very serious situation. We have got the people here. I think they have an obligation to——

Chairman FLAKE. Mr. Roth, I asked them to come and to submit testimony. We have asked questions regarding that testimony. And I think your time is expired.

Mr. ROTH. But we haven't gotten any answers, Mr. Chairman.

Chairman FLAKE. You have gotten answers to what I have asked them to answer to in this particular hearing.

Mr. ROTH. Well, Mr. Chairman, I am most disappointed that we have the gag rule on this subcommittee. I must say in my years at Congress this is the first time that we have been gagged and we have had some serious hearings——

Chairman FLAKE. I think I have been very fair to you, Mr. Roth, and I certainly appreciate your presence and your involvement and your role with this subcommittee, and I would hope that you would not feel you have been gagged when for the last 8 minutes you

have followed a line of questions that had nothing to do with this hearing.

Mr. ROTH. Mr. Chairman, everything it——

Chairman FLAKE. The hearing is adjourned. Thank you.

[Whereupon, at 11:25 a.m., the hearing was adjourned.]

APPENDIX

March 2, 1994

FLOYD H. FLAKE, NEW YORK, CHAIRMAN
STEPHEN L. NEAL, NORTH CAROLINA
NYDIA M. VELAZQUEZ, NEW YORK
MAURICE HINCHEY, NEW YORK

TELEPHONE (202) 225-2828
(202) 225-7145 (FAX)

TOBY ROTH, WISCONSIN
THOMAS RIDGE, PENNSYLVANIA

U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS
SUBCOMMITTEE ON GENERAL OVERSIGHT,
INVESTIGATIONS, AND THE RESOLUTION OF
FAILED FINANCIAL INSTITUTIONS
OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
ROOM 139, FORD HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6056

OPENING STATEMENT

OF

HONORABLE FLOYD H. FLAKE, CHAIRMAN

SUBCOMMITTEE ON GENERAL OVERSIGHT, INVESTIGATIONS AND

THE RESOLUTION OF FAILED FINANCIAL INSTITUTIONS

ON

WEDNESDAY, MARCH 2, 1994

Good morning and welcome to the Subcommittee on General Oversight's hearing on the Resolution Trust Corporation's implementation of the management reforms of the RTC Completion Act of 1993 and its amendments to the Minority- and Women-Owned Business Program. Today's hearing is very important to me as well as other members of this subcommittee and the full banking committee. I, along with many of my colleagues on this committee, have heard from individuals nationwide who, in too many instances, have consistently encountered difficulty when attempting to conduct business with the RTC. As a government corporation established to dispose of and manage the assets of failed savings and loans, it is imperative that all individuals receive equal opportunity to participate in this process.

While this financial crisis cost the taxpayer billions of dollars, it also created a

variety of financial opportunities for related businesses, regardless of race, ethnicity or gender. Yet, it has been widely reported that there are too many examples of only "insiders" being able to secure viable deals with the RTC. Other examples of flagrant abuse and misuse of power by RTC personnel as reported to this subcommittee, I believe, can be attributed to a lack of responsible oversight and management, from the top, of those individuals responsible for executing these directives.

I want to state for the record that I am somewhat dismayed that here we are one year and $10 billion later and we still do not have a chief executive officer who will be accountable to this Congress and the American taxpayer in directing the RTC to abide by the law. How can we expect to see the long-overdue results we need to see in the MWOB program under these circumstances. Yet I am certain that you, as representatives of the RTC, are prepared today to dazzle this subcommittee with stellar numbers reflecting record achievements when I have proof to the contrary. It is unfortunate that Mr. Altman could not be here with us today, but he has assured me that Jack Ryan, the permanent deputy chief executive officer will respond in full to the subcommittee's questions and be accountable for the RTC's policies outlined today.

Toward that end, there are specific areas that the subcommittee will be targeting this morning and will continue to monitor carefully until the RTC completes its task. Specifically, we will focus on the progress the RTC is making in advancing its management reforms agenda. I am including these concerns in my opening statement because I want to make it absolutely clear that these are the areas of greatest importance to me and other members of this subcommittee and the banking committee.

I want to know what the RTC is doing to maximize the use of minority-and women-owned businesses; to increase opportunities for small investors; to promote and guarantee

adequate competition and fair and consistent treatment of offerors; to ensure that contracting policies and procedures require the purchase of sound, cost-effective services; to ensure that contracts are adequately planned, including clear assessment of services needed, cost estimations and scope of work definitions; to ensure that all policies and procedures are followed in the solicitation, selection and awarding of contracts; and last, but not least in importance, to provide the training and necessary oversight to guarantee that all RTC program and field offices understand the Minority and Women's Program requirements and incorporate them into their daily operations.

I have read the status report of the RTC Completion Act Management Reforms Section 3(a) and am requesting a copy of the forthcoming directive regarding the Contracting Policy and Procedures Revision due to be finalized this month. Further, I would like to know what affirmative actions the RTC has taken under the revised minority preference in acquisition statutes to increase the participation of minority acquirers in the resolution of failed thrifts; and I would like to review in advance the new Minority Resolution Preference Guidelines to ensure that they reflect the intent of the RTC Completion Act and, in fact, maximize MWOB participation. Much to my dismay, the RTC issued guidelines on January 10, 1994 which were immediately rescinded as "not complete nor fully reflective" of RTC's implementation plans. This flawed guidance was provided to potential minority acquirers and caused serious concern. Even more distressing is the issuance of the Directive on Minority Preference in Resolutions dated February 28, 1994 that I received a copy of yesterday, which followed the RTC's solicitation of bids nationwide without this directive available or in place. This is not good. Please know that if there is some confusion as to what Congress meant when it adopted this language, we will be more than willing to help you interpret the statute in a clear, concise manner.

Also, I along with other members of this subcommittee will be monitoring very carefully the RTC's complete implementation of the 10 management reforms. We do not intend, however, to allow the RTC to continue working in such a haphazard and inconsistent manner. Time is of the essence here, and since this is Congress' last opportunity to ensure the RTC is operating in a safe, sound and equitable manner, I must stress the importance of consistent policy and guidelines and the implementation of reasonable mechanisms to ensure this. Therefore, this subcommittee is requesting a monthly status report on the implementation of all 1993 management reforms and the specific details of the sale of each of the remaining 63 institutions. I want an analysis of all bids and awards included in the documentation for these institutions. This subcommittee will be carefully monitoring the effectiveness of the implementation of the reforms and the efforts made by the senior Treasury and RTC executives to make certain that those charged with the task of implementing these reforms on a day-to-day basis are doing so as was intended by law.

The RTC is scheduled to terminate its operations on December 31, 1995 and the window of opportunity for minority-and women-owned businesses is closing. Last March 23rd, I was pleased to welcome Roger Altman as Interim Chief Executive Officer of the RTC. At that time, I thought that I made it very clear in my opening statement that "there has to be a commitment to minority, women and small business participation from the top down for the RTC to function in accordance with law". Further, I believed that the new Administration needed time to implement these changes particularly as it relates to diversity within the RTC. However, here we are one year later and the RTC appears to be operating in a "business-as-usual atmosphere" without fear of reprisal. This must stop and the RTC must increase contracting opportunities for MWOBs and MWOLFs in the management and disposition of RTC's remaining assets, in business and legal service contracts, asset purchases (including investor funds), and the acquisition of thrift

institutions. As chairman of the subcommittee, I believe that there is a direct correlation between effective implementation of these rules and increased opportunities for all qualified contractors and acquirers. It is imperative that those at the top recognize that we will be unable to successfully implement reforms in these final months unless we integrate and diversify the RTC's work force, particularly those positions charged with impacting policy and performance. This subcommittee will also continue to monitor the employment practices of this agency as it considers its transition into the FDIC.

At this time I would like to welcome our witnesses and hear from other members who wish to be recognized at this time for opening statements.

Today's witnesses are: John Ryan, Deputy Chief Executive Officer of the Resolution Trust Corporation; Johnnie B. Booker, Vice-President and Director of Minority and Women's Program, Resolution Trust Corporation; J. Paul Ramey, Vice President and Director of Resolutions, Resolution Trust Corporation; and Ellen Kulka, Senior Vice President and General Counsel of the Resolution Trust Corporation.

If for some reason, I am unable to have all of my questions answered by the RTC this morning, I will submit them in writing and would like your assurance that they will be responded to in a timely manner.

OPENING STATEMENT -- OVERSIGHT SUBCOMMITTEE
CONGRESSWOMAN NYDIA VELAZQUEZ
MARCH 2, 1994

THANK YOU MR. CHAIRMAN, AND GOOD MORNING TO OUR WITNESSES. I COMMEND THE CHAIRMAN FOR HIS CONTINUING SCRUTINY OVER AN ISSUE OF GREAT IMPORTANCE TO OUR NATION -- INCREASED ECONOMIC OPPORTUNITY FOR MINORITY- AND WOMEN-OWNED BUSINESSES. GREATER DIVERSITY IN THE FINANCIAL SERVICES INDUSTRY SPURS ECONOMIC DEVELOPMENT IN PREDOMINANTLY MINORITY NEIGHBORHOODS AND CREATES MORE JOBS FOR PEOPLE OF COLOR AND WOMEN. PERHAPS MOST IMPORTANTLY, MINORITY AND WOMEN OUTREACH PROGRAMS LIKE THE ONE BEFORE US HELP TO ENSURE THAT WE NO LONGER SQUANDER THE IMMENSE TALENT AND ENERGY OF OUR PEOPLE. IN THE END, ALL AMERICANS BENEFIT.

UNFORTUNATELY, MINORITY AND WOMEN INVOLVEMENT IN RTC ACTIVITIES HAS BEEN, AND REMAINS, A PROBLEM. ONLY ABOUT TEN PERCENT OF MINORITY-AND WOMEN-OWNED BUSINESSES ARE CURRENTLY PARTICIPATING. WE MUST DO BETTER. THE RTC MUST MAXIMIZE

ECONOMIC OPPORTUNITIES FOR MINORITY- AND WOMEN-OWNED BUSINESSES AND INSTITUTIONS IN THE REMAINING EIGHTEEN MONTHS OF IT'S CHARTER.

I LOOK FORWARD TO HEARING FROM MR. ALTMAN AND HIS COLLEAGUES ON THE RTC'S OUTREACH TO MINORITY- AND WOMEN-OWNED BUSINESSES OVER THE PAST YEAR, AND THEIR PLANS FOR INCREASING MINORITY AND WOMEN PARTICIPATION IN THE COMING EIGHTEEN MONTHS. THANK YOU.

TESTIMONY

OF

JOHN RYAN, DEPUTY CEO

THE RESOLUTION TRUST CORPORATION

SUBCOMMITTEE ON GENERAL OVERSIGHT,

INVESTIGATIONS, AND THE RESOLUTION OF

FAILED FINANCIAL INSTITUTIONS

10:00 A.M.

MARCH 2, 1994

2222 RAYBURN HOUSE OFFICE BUILDING

Good morning, Mr. Chairman and Members of the Subcommittee. This is my first appearance before the Subcommittee since being appointed Deputy Chief Executive Officer of the RTC in early January. With me today are Johnnie B. Booker, Vice President, Division of Minority and Women's Programs, Ellen B. Kulka, our newly appointed General Counsel who joined the RTC in mid-January, and J. Paul Ramey. Vice President, Division of Resolutions.

I would like to thank you, Mr. Chairman, and Members of the Subcommittee for your efforts to secure funding for the RTC. With your help, the RTC Completion Act was enacted last December. The RTC will now be able to complete its mission, close its doors and bring the S&L cleanup to a close.

We are here to address the management reforms found in Section 3 of the RTC Completion Act that provide Minority- and Women-owned Businesses (MWOBs) and Minority- and Women-owned Law Firms (MWOLFs) with enhanced opportunities to do business with the RTC and that provide minorities with enhanced opportunities to acquire institutions from the RTC.

MWOB and MWOLF Activities

Mr. Chairman, I am pleased to report on the record we have built and the steps we have taken to provide opportunities for minority-and women-owned businesses at the RTC.

First, to demonstrate the RTC's commitment, the Minority and Women's Program (MWP) was moved up in the organizational structure to the Division level. Its manager was made a full Vice President, serves on the Executive Committee, and reports directly to the CEO.

Second, we made sure that the MWP Division was involved fully in the contracting process. It now participates in virtually every phase of contract operations, including pre-solicitation, solicitation, evaluation, selection, contract administration, and post-award activity.

The record demonstrates the effectiveness of these actions. On a cumulative basis since inception, the RTC has awarded 126,939 non-legal contracts nationwide, with 41,267 or 33 percent being awarded to MWOBs. Of the $3.7 billion awarded in non-legal fees, $786 million (21 percent) has been awarded to MWOBs. Non-minority women received fees of $399 million, or 11 percent of total fees. Ethnic minorities received $387 million, or 10 percent of fees **(Exhibit 1)**.

Now, let's look at last year. Although total contract awards and related fees decreased in 1993 reflecting the approaching completion of the RTC's activities, the proportion going to MWOBs has increased. In 1993, RTC paid non-legal fees of $500 million, with MWOBs receiving $155 million (31 percent). Non-minority women were awarded fees of $54 million (11 percent). Ethnic minorities received $101 million in fees (20 percent). The proportion of non-legal

contracts awarded to MWOBs rose from 35 percent in 1992 to 43 percent in 1993. Over the same period, the proportion of fees going to MWOBs rose from 22 to 31 percent.

The RTC also has continued efforts to encourage the use of minority- and women-owned law firms (MWOLFS). Between January and May of 1993, the RTC conducted a symposium in each region to identify new MWOLFs and to increase the fees and referrals to MWOLFs. In an effort to get MWOLFs and minority and women attorneys involved in more complex legal matters, three additional symposiums were held during the last half of 1993, the objectives of which were:

- to facilitate the assignment of work to RTC-approved MWOLFS and minority and women attorneys;

- to provide educational sessions for MWOLFs and minority and women attorneys on procedural and substantive issues applicable to the representation of the RTC in complex legal matters such as professional liability cases, securities, real estate, litigation and affordable housing;

- to provide instruction and guidance on the formation of acceptable joint-referral arrangements; and

- to facilitate communication and interaction between MWOLFs and non-MWOLFs, minority and women attorneys and RTC legal staff.

As a result of these activities, MWOLF and minority and women attorney participation levels have increased.

As of December 31, 1993, 1,083 MWOLFs were on the RTC's List of Counsel, comprising 35 percent of the total number of firms, including 633 minority-owned firms and 450 women-owned firms, compared to only 771 MWOLFs (or 34 percent of all firms) in 1992, including 458 minority-owned firms and 313 women-owned firms.

Last year, MWOLFS received $53.8 million (or 13 percent) of all legal fees from the RTC, a significant increase over the $37.6 million (or 10 percent) paid in 1992 (**Exhibit 2**). Minority-owned law firms received $35.7 million (or 9 percent) in 1993, above the $23.1 million (or 6 percent) in 1992. Women-owned law firms received $18.1 million (or 5 percent) in fees in 1993, up from $14.5 million (or 4 percent) received in 1992.

The RTC has worked to improve asset acquisition opportunities for minorities, women, and small investors. The Small Investor Program (SIP) was established a year ago to ensure that assets are available for sale individually to small investors with moderate levels of capital. This program has aggressively sought to expand the participation of small investors in virtually all of the agency's asset offerings. The investor database that is used for direct mail marketing of

RTC sales initiatives has been expanded, and of the 4,000 investors registered in the Small Investor Database, 969 investors identified themselves as minorities and 799 as women.

Significant minority participation has occurred in the RTC's major sales initiatives over the past year. In August of last year, 14 percent of the registered bidders identified their firms as either minority- or women-owned at the RTC's nonperforming loan auction. In its Judgments, Delinquencies, and Chargeoffs (JDC) initiative, about 80 percent of the bidders had MWOB equity or MWOB subcontracting participation.

In the Affordable Housing Disposition Program, the RTC uses a network of 66 community-based nonprofit housing organizations to provide an array of marketing strategies to reach low-income families and minorities. Approximately 40 percent of buyers at recent sales events were minorities and 74 percent were first time buyers.

Mr. Chairman, let me now turn to the newly-enacted RTC Completion Act and its provision to provide enhanced opportunities for MWOBs and MWOLFs. I want to be clear about the approach we are taking. We fully support the inclusion of minorities and women in all aspects of RTC work, from contracting, to asset sales, to resolutions. Whenever possible, we have and will interpret minority preference provisions as expansively as possible within both the letter and the spirit of the law, while at the same time balancing the mandate to do our job at the least possible cost to the taxpayers.

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MWOB and MWOLF Contract Parity Guidelines

The RTC Completion Act requires the RTC to establish guidelines for achieving the goal of a reasonably even distribution of contracts awarded to the various subgroups of minority- and women-owned businesses and minority- and women-owned law firms that comprise five percent or more of all certified MWOBs and MWOLFs. These subgroups include such minority groups as blacks, Hispanics, Asians, and non-minority women.

These guidelines will, of course, be applied prospectively. As the first step to developing such guidelines, the RTC is conducting an analysis comparing contracts and fees awarded to various MWOB subgroups in each RTC region and the Washington Office, so that under-represented subgroups can be identified.

The RTC's Interim Final Rule on Minority and Women Outreach and Contracting Programs was published in the Federal Register, on August 10, 1992 and is currently in effect. To incorporate the RTC Completion Act requirements, the RTC is in the process of preparing a new Interim Final Rule. The new Interim Final Rule will incorporate parity guidelines for all future contracts, including legal contracting. These guidelines will also be reflected in an upcoming revision to the Contract Policy and Procedures Manual (CPPM).

MWOB Subcontracting Goals

In accordance with the RTC Refinancing, Restructuring and Improvement Act of 1991 (RTCRRIA), the RTC currently awards bonus points on both the technical portion and cost portion of contract evaluations to MWOBs or to firms that commit to substantial MWOB participation. Full bonus points are awarded when MWOBs will receive 40 percent or more of estimated fees, and partial bonus points are awarded when MWOBs will receive 25 percent to 40 percent of estimated fees. To augment this policy, the RTC Completion Act requires that the RTC establish a goal for mandatory MWOB subcontracting for all contracts equal to or greater than $500,000, with certain exceptions.

The new Interim Final Rule on Minority and Women Outreach and Contracting Programs will provide these guidelines. The RTC's policy implementing this law requires MWOB subcontracting of:

- 10 percent for non-MWOB prime contractors and MWOB joint ventures with less than 50 percent MWOB prime contracting participation;

- 5 percent for MWOB firms or joint ventures with 50 percent or more MWOB prime contracting participation.

Reviewing and Revising Contracting Procedures

Another provision in the RTC Completion Act requires a review of our contracting policies and procedures with a particular eye to their effect on minority contractors. All solicitations for new contracts and renewals of existing contracts undergo, on a continual basis, an extensive review to identify any inadvertent exclusionary language. The RTC will also review existing lists of eligible contractors (for Basic Ordering Agreements and Task Order Agreements) to ensure maximum participation by MWOBs. For each solicitation, lists are reviewed to include MWOB contractors, and MWP staff input is solicited. More explicit direction will be forthcoming in the CPPM revision.

Contracting Sanctions

The RTC will provide sanctions for violations of MWOB subcontracting and joint venture requirements, underscoring the importance of this policy. These sanctions will also be incorporated in the new Interim Final Rule on the RTC's Minority and Women Outreach and Contracting Programs. These sanctions may entail contract suspension, exclusion or even

termination and will apply to MWOBs and MWOLFs as well. When these sanctions are formally approved, they will be incorporated into new contracting documents.

Minority Acquisition of Institutions

Now, let me move on to resolutions. Minority preferences are not new to the RTC. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) provided for an absolute bidding preference in the acquisition of minority institutions by like-minority bidders. To facilitate these transactions, the RTC developed a program of interim capital assistance. Under this program, the RTC lends the acquirer up to two-thirds of required capital.

Since inception, 29 minority institutions have failed. Of these 29 thrifts:

- 12 were acquired by like-minority bidders. All of the 12 were offered interim capital assistance, and six accepted such assistance totaling $7.4 million;
- 9 were acquired by majority bidders;
- 5 were paid out for lack of acquirer interest; and

- 3 have not yet been resolved.

RTCRRIA provided additional assistance to minority bidders. In cases where no acceptable bids are received as part of the normal bidding process, RTCRRIA requires that majority branches and institutions are to be offered to minority acquirers with the option of interim capital assistance and performing loans and assets. In addition, facilities located in predominantly minority neighborhoods that are owned by the failed institution may be leased on a rent-free basis by the minority acquirer for a five-year period with a purchase option available at that time. The rent-free assistance option is the only assistance provision available to non-minority women acquirers.

Under these provisions, one whole majority institution and three branches of another majority institution have been acquired by one minority acquirer. A total of $109 million of assets was sold to the acquirer and rent-free assistance was provided on one branch. One other whole majority institution acquisition by a minority acquirer is in process. In this pending transaction, RTC is making available interim capital assistance and $80 million in earning assets to the minority acquirer.

In addition to those minority resolutions that have occurred with assistance, the RTC has sold three whole institutions and seven branches of another institution, with deposits of about $600 million, to minority acquirers through the normal bidding process.

The RTC Completion Act further enhanced the opportunities the RTC can provide to minority acquirers of failed thrift institutions. The RTC Completion Act requires that, in considering offers to acquire any institution or branch located in a predominantly minority neighborhood (PMN), the ***RTC shall give preference to an offer of a minority bidder over any other offer that results in the same cost to the RTC.***

We have been working diligently on the definitions and procedures that will be utilized in implementing this provision of the RTC Completion Act. Throughout this effort, we have been mindful of the two basic requirements imposed on RTC by this provision: (1) minority acquirers must be given a meaningful preference for institutions or branches in PMNs; and (2) this preference must be consistent with the objective of resolving the institutions at the least cost to the American taxpayer.

On February 24, 1994, the RTC published in the Federal Register an interim rule that defines the term "predominantly minority neighborhood" as any postal zip code area in which 50 percent or more of the residents are minorities, unless the RTC has determined that other reasonably reliable and readily accessible data indicate more accurate neighborhood boundaries. The rule, which provides for a 30-day period for public comment, became effective on an interim basis upon publication (**Exhibit** 3).

On February 28, 1994, we issued a directive that implements the minority acquisition provisions of the RTC Completion Act (**Exhibit 4**). In general, the directive defines an institution in a PMN as:.

- An institution whose home office is located in a PMN; or

- An institution with 50 percent or more of its branches in PMNs.

Mr. Chairman, we believe that this definition of an institution in a PMN is consistent with the intent of Congress that real opportunities be created for minority acquirers of failed thrifts. As shown in **Exhibit 5**, based solely on zip code areas, ten of RTC's current conservatorships meet this definition. Collectively the ten institutions have 122 offices and hold $3.5 billion in deposits. In addition, there are another 35 offices of 11 other institutions with over $900 million in deposits that are located in PMNs (**Exhibit 6**). ***All told, about $4.3 billion in deposits or roughly one-quarter of the deposits held by the RTC's current conservatorships will come under the minority preference provisions.***

The directive spells out bidding procedures for institutions or branches in PMNs. Generally, in bidding for institutions or branches in a PMN, if a minority bidder bids within 10 percent of the high bid (which has been made by a majority bidder), both the high majority bidder and the high minority bidder shall have an opportunity to submit one more best and final bid. This is

within the spirit of the requirement in the RTC Completion Act that minority bidders receive a meaningful preference while still maximizing returns to the taxpayer.

In addition, minority bidders for institutions or branches in PMNs are to be offered interim capital assistance for up to two-thirds of required regulatory capital. This assistance may include up to two-thirds of any premium paid by the acquirer, provided that the total amount of interim capital assistance does not exceed the tangible equity of the institution. It is important to note that this will increase the amount of capital assistance that may be provided by the RTC by as much as 50 percent. In all instances, the primary regulator will have to approve the transaction.

As in existing minority acquisition programs, we will make earning assets available to minority acquirers of institutions and branches in PMNs in order to augment their operating income. These acquirers will have an option to purchase eligible RTC assets (generally, 1-4 family mortgages) at market values. Asset prices will be based on FNMA commitment rates. These assets will be offered with standard RTC representations and warranties. In order to provide additional flexibility in asset selections, minority acquirers will have an option to acquire assets at market value up to 100 percent of net deposits (total deposits less brokered deposits and liquidity reserves), to be selected from a pool equal to 110 percent of net deposits.

All told, the RTC is holding approximately $3 billion in residential mortgages for possible transfer to minority acquirers. Since assets transferred to minority acquirers will not be subject to a marketing process, and since it is our intent to provide earning assets to minority-owned

institutions to hold in portfolio, the RTC will require that, if the acquiring institution sells these assets within 6 months, any profits will be shared 50-50 with the RTC.

Finally, both to aid minority acquirers and to promote banking services in PMNs, the RTC has the authority to offer minority acquirers branch offices owned by the failed institutions and located within a PMN on a rent-free basis for 5 years.

In conclusion, let me reiterate that the RTC is committed to expanding opportunities for minorities and women, and to fully implementing all aspects of the RTC Completion Act.

I would be happy to answer any questions.

Exhibit 1
Summary of MWOB Non–Legal Contracting

Inception through December 31, 1993				
Ethnic/Gender Identity	Awards	%	Estimated Fee Value (in millions)	%
All Contracts	126,939	100.0%	$3,735.8	100.0%
Non–Minority Men	85,672	67.3%	$2,949.6	79.1%
MWOB	41,267	32.6%	$786.2	20.8%
Non–Minority Women	27,391	21.7%	$399.1	10.6%
All Minority	13,876	10.9%	$387.1	10.1%

1993				
Ethnic/Gender Identity	Awards	%	Estimated Fee Value (in millions)	%
All Contracts	22,986	100.0%	$500.3	100.0%
Non–Minority Men	12,997	56.5%	$345.2	69.0%
MWOB	9,989	43.4%	$155.1	30.9%
Non–Minority Women	6,617	28.7%	$53.8	10.7%
All Minority	3,372	14.6%	$101.3	20.2%

1992				
Ethnic/Gender Identity	Awards	%	Estimated Fee Value (in millions)	%
All Contracts	45,928	100.0%	$1,223.0	100.0%
Non–Minority Men	29,945	65.1%	$956.7	78.2%
MWOB	15,983	34.8%	$266.4	21.7%
Non–Minority Women	10,263	22.3%	$95.5	7.8%
All Minority	5,720	12.4%	$170.9	13.9%

Exhibit 2
Summary of MWOLF Legal Contracting

1993				
Ethnic/Gender Identity	Referrals	%	Estimated Fees Paid (in millions)	%
All Contracts	20,059	100.0%	$400.5	100.0%
Non–Minority MWOLFs	8,642	43.1%	$346.7	86.6%
MWOLFs	11,417	56.9%	$53.8	13.4%
Minority–Owned Firms	6,657	33.2%	$35.7	8.9%
Women–Owned Firms	4,760	23.7%	$18.1	4.5%

1992				
Ethnic/Gender Identity	Referrals	%	Estimated Fees Paid (in millions)	%
All Contracts	43,643	100.0%	$368.8	100.0%
Non–Minority MWOLFs	25,225	57.8%	$331.2	89.8%
MWOLFs	18,418	42.2%	$37.6	10.2%
Minority–Owned Firms	10,761	24.7%	$23.1	6.3%
Women–Owned Firms	7,657	17.5%	$14.5	3.9%

Exhibit 3

bank or a foreign bank (as defined in 12 U.S.C. 3101(7)).

(b) *Public disclosure.* (1) Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus of $500,000, whichever amount is less. No disclosure under this paragraph is required if the aggregate amount of all extensions of credit outstanding at such time from the member bank to the executive officer or principal shareholder of the member bank and to all related interests of such a person does not exceed $25,000.

(2) A member bank is not required to disclose the specific amounts of individual extensions of credit.

(c) *Maintaining records.* Each member bank shall maintain records of all requests for the information described in paragraph (b) of this section and the disposition of such requests. These records may be disposed of after two years from the date of the request.

§ 215.12 Reporting requirement for credit secured by certain bank stock.

Each executive officer or director of a member bank the shares of which are not publicly traded shall report annually to the board of directors of the member bank the outstanding amount of any credit that was extended to the executive officer or director and that is secured by shares of the member bank.

§ 215.13 Civil penalties.

Any member bank, or any officer, director, employee, agent, or other person participating in the conduct of the affairs of the bank, that violates any provision of this part (other than § 215.11 of this part) is subject to civil penalties as specified in section 29 of the Federal Reserve Act (12 U.S.C. 504).

Subpart B—[Amended]

§ 215.21 [Amended]

3. Section 215.21 is amended by removing "1841(c)" where it appears in paragraph (a) and adding in its place "1971 and 1972" and by removing footnote 10 and redesignating footnotes 11 and 12 as footnotes 5 and 6.

§ 215.22 [Amended]

4. Section 215.22 is amended by removing "12 CFR 226.2(p)" where it appears in paragraph (c)(1)(ii) and adding in its place "12 CFR 226.2(a)(12)".

By order of the Board of Governors of the Federal Reserve System, February 15, 1994.

Dated: February 15, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–3860 Filed 2–18–94, 3:20 pm]

BILLING CODE 6210–01–P

RESOLUTION TRUST CORPORATION

12 CFR Part 1630

RIN 3205–AA21

Definition of Predominantly Minority Neighborhood

AGENCY: Resolution Trust Corporation.

ACTION: Interim rule; request for comments.

SUMMARY: The Resolution Trust Corporation (RTC) is hereby adopting an interim rule which defines "predominantly minority neighborhood" as used in section 21A(s) of the Federal Home Loan Bank Act (FHLBA) and section 21A(w)(17) of the FHLBA, as amended by the Resolution Trust Corporation Completion Act. Section 21A(w)(17) of the FHLBA requires, among other things, that in considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under section 21A(s) of the FHLBA), the Corporation shall give preference to an offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation, as determined under section 13(c)(4) of the Federal Deposit Insurance Act. Section 21A(s) of the FHLBA permits the RTC to lease to a minority acquiror, on a rent-free basis, subject to certain conditions, any branch of a failed institution which is located in a "predominantly minority neighborhood." Section 21A(w)(17) of the FHLBA also generally provides that the RTC may provide to such minority individual, minority-owned business, or minority depository institution additional preferences in the form of capital assistance and performing assets. The interim rule generally defines "predominantly minority neighborhood" as any U.S. Postal Zip Code geographical area in which 50% or more of the persons residing therein are minorities based upon the most recent Census data, unless the RTC has determined, in its sole discretion, that other reasonably reliable, readily accessible data indicates different neighborhood boundaries. The RTC is also seeking comment on the interim rule.

This interim rule is effective on February 24, 1994.

DATES: Comments must be submitted on or before March 28, 1994.

ADDRESSES: Written comments regarding the interim rule should be addressed to John M. Buckley, Jr., Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand delivered to room 321 on business days between the hours of 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., during the same business hours. Phone number: 202–416–6940; FAX number: 202–416–4753.

FOR FURTHER INFORMATION CONTACT: Robert C. Fick, Counsel, TRC Legal Division, (202) 736–3069; Gregory B. Smith, Senior Counsel, RTC Legal Division, (202) 736–3013; Mark G. Flanigan, Senior Attorney, RTC Legal Division, (202) 736–3085; Edward Thomas, Resolutions Analyst, (202) 416–7179; Sherry Chen, Field Resolutions Specialist, (202) 416–7209. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

In August 1989, Congress enacted section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA), (codified as section 21A(b) of the FHLBA, 12 U.S.C. 1441a(b)), which established the Resolution Trust Corporation (RTC). Pursuant to FIRREA the RTC has the duty to manage and resolve failed depository institutions that come under its jurisdiction and to conduct the operations of the RTC in a manner which "maximizes the * * * return from the sale of institutions or assets," "makes efficient use of funds" and "minimizes * * * losses * * * in the resolution of [failed institutions]". Section 21A(b)(3) of the FHLBA, as added by section 501(a) of FIRREA. In addition, the RTC is required to resolve all failed institutions in the "least costly * * * of all possible methods" (collectively Cost Constraints). Section 13(c)(4)(A)(ii) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1823(c)(4)(A)(ii), as made applicable by section 21A(b)(4) of the FHLBA, 12

U.S.C. 1441e(b)(4). The RTC is committed, wherever practicable and whenever consistent with those statutory Cost Constraints, to preserving the ownership characteristics of historically minority-owned depository institutions, and to increasing the total number of minority-owned depository institutions. See, Strategic Plan for the Resolution Trust Corporation, 54 FR 46574, November 3, 1989.

Section 21A(s) of the FHLBA permits the RTC to make available to an acquiror which is either a minority depository institution or a women's depository institution, on a rent-free lease basis for not less than 5 years, any branch of a failed institution which is located in a "predominantly minority neighborhood."

Section 21A(w)(17) of the FHLBA, which was added by section 3(a) of the Resolution Trust Corporation Completion Act, Pub. L. 103-204 (the Act), provides that in considering offers to acquire any insured depository institution, or any branch thereof, located in a "predominantly minority neighborhood", (as defined in regulations prescribed under subsection (s)), the RTC shall give preference to an offer from a minority individual, minority-owned business, or a minority depository institution (Minority Acquiror), over any other offer that results in the same cost to the RTC as determined under section 13(c)(4)(A) of the FDIA.[1]

This interim rule defines "predominantly minority neighborhood" as used in sections 21A(s) and 21A(w)(17) of the FHLBA as a geographic area constituting a United States Postal Service 5-digit Zip Code (Zip Code) in which 50% or more of the persons residing therein are minorities, based upon the most recent census data, unless the RTC determines, in its sole discretion, that other reasonably reliable, readily accessible data indicates different neighborhood boundaries. The population data and the minority composition of these Zip Codes are determined using the most recent (currently 1990 data) Census of Population data (Census Data) collected and published by the U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (Census Bureau).

If the institution or a branch thereof is located in a Zip Code area for which no significant Census Data is available (e.g., a business district or office building) the Zip Code of a nearby geographic area served by the institution or branch, for which such Census Data is available, will be used as its Zip Code for purposes of this rule. If the RTC determines, in its sole discretion, based upon other reasonably reliable and readily accessible data, and subject to RTC's Cost Constraints, that a different delineation would more accurately reflect the area served by the financial institution or branch to be marketed, the RTC will use such delineation as the boundaries for the relevant neighborhood.

There is no legislative history which might provide clear guidance in developing a definition of "predominantly minority neighborhood." Consequently, except for the word "minority" which is statutorily defined, the definition of "predominantly minority neighborhood" was, therefore, developed based upon the common or ordinary meanings of the individual words comprising the phrase, the statutory context in which they have been used, and based upon readily available data.

One of the ordinary meanings of the word "predominant" is "the most common." WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 927 (1988). Since in the context of this statutory framework a neighborhood can only be either a minority neighborhood or a non-minority neighborhood, the most common or prevalent of two categories means a majority or more than half. Moreover, consistent with the legislative purpose of preserving and promoting minority ownership and service, in the case of any exact 50% split between the two categories, minorities should be viewed as predominant. Therefore, if half or more of the residents of a neighborhood are minorities, that neighborhood is predominantly minority.

The word "minority" is defined by statute to have the meaning given such term in section 1204(c)(3) of FIRREA. Sections 21A(s) & 21A(w)(17) of the FHLBA. Section 1204(c)(3) of FIRREA defines "minority" to mean "any Black American, Native American, Hispanic American, or Asian American." This interim rule provides a definition of the word "minority" which incorporates the statutory definition but permits the use of equivalent classifications used by the Census Bureau in collecting the Census Data. Among other categories, the Census Bureau collects and publishes population Census Data by State, County, County subdivision, Place, Zip Code (available on CD-rom or tape) Census Tract or block numbering area, Block group, and Block. Each census of the U.S. population provides data on the minority composition of those areas in a manner which corresponds with the statutory definition of "minority" in FIRREA. The population classifications utilized in the Census Data for the 1990 census are: Hispanic origin and the following racial categories: White; Black; American Indian, Eskimo, or Aleut; Asian or Pacific Islander; and Other Race. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF POPULATION, GENERAL POPULATION CHARACTERISTICS (1992). Since Census Data is readily available, its use to determine the minority composition of a particular geographic area is not only reasonable and efficient, but also consistent with the RTC's statutory Cost Constraints.

The ordinary dictionary meaning of the word "neighborhood" is a district or area with distinctive characteristics. WEBSTER'S II NEW RIVERSIDE UNIVERSITY DICTIONARY 789 (1988). Neighborhoods vary in size and can be contained within each other. Since the only reasonably reliable population data which is readily available on a nationwide basis is Census Data, it is both reasonable and cost-efficient to define "neighborhood" in terms of the geographic areas utilized by the Census Bureau. Census Data, including minority composition, is available for specific geographic areas, including among others, State, County, County subdivision, Place, Zip Code, Census Tract, Block and Block group. Census Tracts and Zip Codes appear to be the only such categories which might approximate the size and characteristics of a "neighborhood" served by an "institution, or any branch" thereof.[2]

[1] This Act also provides, in connection with such an acquisition, the following additional preferences: (i) the Minority Acquiror shall be eligible for minority interim capital assistance under section 21A(u)(1) of the FHLBA, provided that such assistance is consistent with section 13(c)(4)(A) of the FDIA; (ii) the RTC may provide to the Minority Acquiror performing assets under the RTC's control, in addition to those of the depository institution or branch to be acquired, in an amount not greater than the amount of the net liabilities carried on the books of the depository institution or branch and acquired by the Minority Acquiror; and (iii) such disposition of the performing assets of the failed depository institution or branch to the Minority Acquiror shall have a first priority over a disposition by the RTC of such assets for any other purpose

[2] The RTC has found no indication that an extensive, customized survey and analysis of the demographics and other characteristics of the geographic area surrounding each branch of a failed institution would yield results significantly different from those obtained by using Census Data and Zip Codes or Census Tracts. In addition, reliable population data for individually determined areas is not readily available on a consistent nationwide basis. The nature of the RTC's statutory Cost Constraints in marketing and

Continued

The United States Postal Service has subdivided the United States and its territories into discrete geographic areas for purposes of the distribution of mail, and has designated each such area with a 5-digit numeric Zip Code. See, U.S. Postal Service, 1993 NATIONAL FIVE-DIGIT ZIP CODE & POST OFFICE DIRECTORY. The individual areas defined by the Zip Codes generally correspond to a district or area with distinctive characteristics. The Zip Code itself is one distinctive characteristic that ties the area and its residents together. Moreover, most Zip Code areas are further distinguished by the presence of a postal facility designed to service those neighborhoods. Accordingly, Zip Codes constitute an existing, comprehensive system for describing areas that generally approximate neighborhoods.

Individual Census Tracts and Census Blocks, by their nature, do not appear to be reasonable alternatives to Zip Codes to utilize on a general basis. According to the Census Bureau, Census Blocks are small areas bounded on all sides by visible features such as streets, roads, streams, and railroad tracks, and by invisible boundaries such as city, town, township, and county limits, property lines, and short, imaginary extensions of streets and roads. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF HOUSING, GENERAL HOUSING CHARACTERISTICS (1992). Individual Census Blocks because of their size appear to be inappropriate for determining the boundaries of a neighborhood served by a financial institution, or a branch thereof on a general basis. Census Tracts,[3] although larger than Census Blocks, are small, relatively permanent statistical subdivisions of a country which usually have between 2,500 and 8,000 persons, and when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Bureau of the Census, Economics and Statistics Administration, U.S. Department of Commerce, 1990 CENSUS OF HOUSING, GENERAL HOUSING CHARACTERISTICS (1992).

Individual Census Tracts or Census Blocks are generally impractical for use in defining the boundaries of a neighborhood served by a financial institution, or a branch thereof, on a generally uniform basis and are inconsistent with the spirit of the legislation. However, use of Census Tracts or Census Blocks on an individual or aggregate basis may be appropriate on an exception basis. The Act is intended to enhance opportunities for Minorities to acquire institutions and branches which primarily "serve" Minority residents. 139 Cong. Rec. H10899–900 (daily ed. November 22, 1993) (statement of Rep. Mfume). The people served by a depository institution or branch may be located over a relatively large geographic area, generally transcending Census Block boundaries and, most likely, Census Tract boundaries as well. Census Tracts and Census Blocks tend to be small areas, focused only on residences and are generally not focused on all residential neighborhoods served by a local financial institution, or a branch office thereof.

The Zip Codes (and the boundaries thereof) of offices of a failed institution tend to be larger areas and are readily ascertainable both by RTC personnel and by potential bidders. Such is not the case for Census Tracts. The addresses of each of the offices of a failed institution already contain the Zip Code, and the boundaries of each Zip Code area are available at the local Post Office.

Notwithstanding the obvious advantages of a definition based on fixed methodology, circumstances may arise where that approach fails to accurately reflect the reality of the relevant neighborhood. For example, if an institution or branch is physically located within Zip Code 00001, near the boundary with Zip Code 00002, a mechanical application of the Zip Code approach would indicate that the branch serves customers in the neighborhood defined by Zip Code 00001. Or for example, a rigid application of the Zip Code approach to the individual offices of an institution might preclude the designation of the whole institution as being located in a predominantly minority neighborhood, although other rational bases might exist for a determination that the institution as a whole is located in a predominantly minority neighborhood. Therefore, rather than rigidly applying the Zip Code approach, if the RTC determines, in its sole discretion and subject to its Cost Constraints, that other reasonably reliable information and data, that is readily accessible to it, indicates different boundaries which more accurately reflect the relevant neighborhood, the RTC may define the relevant neighborhood in terms of those different boundaries.

Conclusion

The RTC's definition of "predominantly minority neighborhood" is based on readily available, established and accepted information: Zip Codes and Census Data. A "predominantly minority neighborhood" can, therefore, be identified using existing, objective standards: (1) A Zip Code to define the geographic area which generally constitutes the neighborhood and (2) Census Data to determine the minority composition of that neighborhood. In the event that the RTC, in its sole discretion, determines that other reasonably reliable information and data, that is readily accessible to it, indicates more accurate boundaries for such neighborhood, the RTC will define such neighborhood using those more accurate boundaries. The proposed definition permits the RTC to quickly identify "predominantly minority neighborhoods" without delaying the resolution of an institution consistent with the RTC's statutory Cost Constraints. The methodology adopted by this interim rule constitutes a reasonable basis upon which to define "predominantly minority neighborhood" consistent with the purposes of sections 21A(s) and (w)(17) of the FHLBA and consistent with the RTC's duties in resolving failed institutions.

Administrative Procedure Act

The RTC is adopting this rule as an interim rule. It will be effective immediately upon publication in the **Federal Register** without the usual notice and comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause." The definition provided by the interim rule implements the Act. Promulgation of the rule on an expedited basis is necessary to permit the immediate implementation of the new statute in order to avoid the additional losses that would otherwise be incurred due to the delay in the resolution of failed institutions pending the usual delayed effective date. Thus, the RTC finds that the benefits to the public in adopting

selling a failed depository institution dictates that the identification of "predominantly minority neighborhoods" be accomplished with relative speed and minimal expense. The failed institutions the RTC resolves suffer significant operating losses on a daily basis. An increase in those operating losses due to a delay in the resolution of the institution caused by the implementation of a definition of "predominately minority neighborhood" which is difficult and time consuming to utilize is clearly inconsistent with the RTC's statutory duties.

[3] Starting with the 1990 Census those areas which are not covered by Census Tracts have been subdivided into "Block Numbering Areas" (BNA's). These BNA's are essentially the equivalent of Census Tracts, except that they have been delineated by a State agency instead of a local committee.

the interim rule outweigh any possible harm resulting from not seeking comment on the proposed rule in advance of its effective date. The RTC actively solicits comment on this interim rule and will consider those comments in the adoption of the rule as final.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following initial regulatory flexibility analysis is provided:

1. Reasons, objectives, and legal bases underlying the interim rule. These elements have been discussed above in the Supplementary Information section.

2. Small entities to which the rule would apply. This rule applies equally to acquiring institutions of all sizes inasmuch as the RTC has been given no discretion in this matter by Congress.

3. Impact of the interim rule on small businesses. There is no burden imposed on small businesses by this rule which merely defines, pursuant to Congressional direction, a term utilized in the statute.

4. Overlapping or conflicting federal rules. There are no known federal rules that overlap, duplicate, or conflict with the interim rule.

5. Alternatives to the interim rule. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the rule because there is no burden imposed on small business.

Request for Public Comment

The RTC is issuing this interim rule in response to statutory direction to define "predominantly minority neighborhood." The RTC is, however, hereby requesting comment during a 30-day comment period on all aspects of the interim rule.

List of Subjects in 12 CFR Part 1630

Savings associations.

For the reasons set out in the preamble, the RTC hereby adds part 1630 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1630—DEFINITION OF PREDOMINANTLY MINORITY NEIGHBORHOOD

Sec.

1630.1 Purpose and scope.
1630.2 Definitions.
1630.3 Predominantly minority neighborhood.

Authority: 12 U.S.C. 1441a(b)(11), (s) and (w)(17).

§ 1630.1 Purpose and scope.

The provisions of this part define "predominantly minority neighborhood" for the marketing, sale and resolution of depository institutions, and branches thereof, by the Resolution Trust Corporation (RTC) under the rent-free lease provisions of section 21A(s) of the Federal Home Loan Bank Act (FHLBA) and the minority preference provisions of section 21A(w)(17) of the FHLBA.

§ 1630.2 Definitions.

(a) *Branch* means a domestic branch as defined in section 3(o) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1813(o).

(b) *Census Bureau* means the U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census.

(c) *Census Data* means the population data, including without limitation the composition by Race and Hispanic origin of each U.S. Postal Service Zip Code area, provided by the Census Bureau for the most recent Census of Population.

(d) *Minority* means, any Black American, Native American, Hispanic American, or Asian American, as specified in section 1204(c)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 as utilized in sections 21A(s) and (w)(17) of the Federal Home Loan Bank Act (12 U.S.C. 1441a) or such other equivalent classifications, as determined by the Resolution Trust Corporation, including, without limitation, those used by the Census Bureau for the most recent Census Data.

(e) *Race* means a racial classification used by the Census Bureau pursuant to the guidelines in Federal Statistical Directive No. 15 issued by the Office of Management and Budget, which provides standards on ethnic and racial categories for statistical reporting to be used by all Federal agencies. The OMB directive is available from Office of Administration, EOP Publications, 725 17th Street, NW., room 2200, New EOB, Washington, DC 20503.

(f) *RTC* means the Resolution Trust Corporation, in its corporate, conservetorship or receivership capacities, as applicable.

(g) *U.S. Postal Service Zip Code* means a five-digit numeric code that identifies a specific geographic area within the United States and its territories which is used by the U.S. Postal Service for the distribution of mail.

§ 1630.3 Predominantly minority neighborhood.

The phrase "predominantly minority neighborhood" as used in sections 21A(s), (w)(17) of the Federal Home Loan Bank Act, means an area delineated by the geographical boundaries of a U.S. Postal Service Zip Code, in which, according to the most recent Census Data, 50% or more of the residential population is Minority; unless a different geographic area has been determined by the RTC, in its sole discretion, based on readily accessible and reasonably reliable information and data, to more accurately represent an area having distinctive or shared characteristics, that is served by the institution, or Branch thereof, being marketed by the RTC, in which 50% or more of the population is Minority.

By order of the Chief Executive Officer.

Dated at Washington, DC, this 18th day of February 1994.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 94–4184 Filed 2–22–94; 11:32 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–59–AD; Amendment 39–8837; AD 94–04–17]

Airworthiness Directives: Twin Commander Aircraft Corporation 500, 520, 560, 680, 681, 685, 690, 695, and 720 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Twin Commander Aircraft Corporation (Twin Commander) 500, 520, 560, 680, 681, 685, 690, 695, and 720 series airplanes. This action requires inspecting the flap system for cables with broken wires or pulleys with worn cable clips, replacing any damaged parts, and replacing the master pulley and cable with new parts of improved design. Reports of cable fatigue, particularly the master pulley cable, on several of the affected airplanes prompted this action. The actions specified by this AD are intended to prevent flap system failure caused by cable fatigue, which could result in loss of control of the airplane.

DATES: Effective April 15, 1994. The incorporation by reference of certain

Exhibit 4

RTC
RESOLUTION TRUST CORPORATION

DIRECTIVE SYSTEM

TYPE AND NUMBER	
Circular 9150.4	
CONTACT	TELEPHONE #
Edward Thomas	(202) 416-7179
DATE	
February 28, 1994	
DATE OF CANCELLATION (Bulletins only)	

TO: All Divisions and Offices, Washington
Field Office Vice Presidents
Vice Presidents and/or Directors, Field Resolution Offices

FROM: J. Paul Ramey
Vice President
Division of Resolutions

SUBJECT: Implementation of "Predominantly Minority Neighborhood" Resolution Provisions of Section 21A (w)(17)(A) of the Federal Home Loan Bank Act

1. Purpose. To issue instructions to be used by the Division of Resolutions personnel in connection with the resolution process, as referenced under section 21A (w)(17) of the Federal Home Loan Bank Act (FHLBA), for institutions and branches thereof located in "predominantly minority neighborhoods." These instructions provide general operating procedures for the implementation of the definition of "predominantly minority neighborhood" in 12 CFR 1630.3, and for the implementation of the bid "preference" provisions of section 21A (w)(17)(A) of the FHLBA. The procedures contained in these instructions are to be used by RTC personnel in conjunction with the provisions of 12 CFR Part 1630 (including all relevant definitions), and section 21A (w)(17)(A) of the FHLBA.

2. Scope. The provisions of this directive apply to all Resolutions personnel in all RTC offices, and any other RTC personnel who communicate with potential bidders or acquiring institutions regarding a resolution involving an institution or any branch located in a "predominantly minority neighborhood."

3. Background. Section 21A (w)(17) of the FHLBA provides, among other things, that "[i]n considering offers to acquire any insured depository institution, or any branch of an insured depository institution, located in a predominantly minority neighborhood (as defined in regulations prescribed under subsection (s)), the Corporation shall give preference to an

offer from any minority individual, minority-owned business, or a minority depository institution, over any other offer that results in the same cost to the Corporation, as determined under section 13(c)(4) of the Federal Deposit Insurance Act [FDIA]." (Hereinafter referred to as "the Bid Preference Provision".)

The RTC's regulatory definition of "predominantly minority neighborhood," as contained in 12 CFR 1630.3, is based on readily available, established and reliable information from 5-digit zip codes and Census Data.

a. A "predominantly minority neighborhood" can, therefore, usually be identified using existing, objective standards, such as: (1) a zip code to define the geographic area which generally constitutes the neighborhood, and (2) Census Data to determine the minority composition of that neighborhood.

b. The definition also allows for the reasonable delineation by the RTC of any other local area having distinctive and shared characteristics that would meet the minority population threshold and qualify as a "predominantly minority neighborhood".

The definition contained in 12 CFR 1630.3 permits the RTC to quickly identify "predominantly minority neighborhoods" without delaying the resolution of an institution consistent with the RTC's statutory cost constraints.

4. Determination of "Predominantly Minority Neighborhoods"

a. For Whole Institutions. The whole institution is to be designated as being located in a "predominantly minority neighborhood," if:

(1) Fifty percent or more of its individual branch offices are determined to be located in "predominantly minority neighborhoods" under paragraph 4b, below; or

(2) Its home office, listed in the records of the Office of Thrift Supervision (OTS) on the date the RTC was placed in control of the failed institution, is determined by the RTC to be located in a "predominantly minority neighborhood" under paragraph 4b, below. However, if, on such date, that home office did not provide deposit-taking services to the neighborhood or

was not the office from which the operations of the institution were actually directed (pursuant to 12 CFR 545.91), it will not be used automatically as the home office for purposes of this definition. Such cases will be dealt with on a case by case basis and referred to the Vice President for the Division of Resolutions.

b. For Individual Branch Offices. An individual branch office is to be designated as being located in a "predominantly minority neighborhood" as defined in 12 CFR 1630.3, if:

(1) The branch office is located in a zip code area that, according to the most recent census data, has a minority residential population equal to or greater than 50 percent; or

(2) The branch office is located in a zip code area that has a minority population, according to the most recent census data, equal to or greater than 39 percent, but less than 50 percent; or a zip code area with a population of 1,500 or less; and if minorities constitute, according to the most recent census, 50 percent or more of the aggregate residential population of the census tract in which the branch is located and of other census tracts that reasonably appear to be served by that office; or

(3) The branch office is determined to be located in a "predominantly minority neighborhood," based on any other readily available and reasonably reliable information that indicates more accurate boundaries for a neighborhood (with a population that is at least 50 percent minority) that is served by that branch office and has shared or distinctive characteristics. This determination will take into consideration written recommendations from RTC personnel in the institution, the RTC Division of Minority and Women's Programs, and potential acquirors. In order to avoid unnecessary delays in the resolution and unnecessary expenses for the RTC and other potential bidders, recommendations from potential acquirors for the designation of branches as being located in a "predominantly minority neighborhood" generally can only be accepted for consideration if received by the Resolutions Specialist no more than 5 business days after the date of the Bid Conference.

5. Procedures for Implementing Bidding Preference in "Predominantly Minority Neighborhood" Resolutions

a. A winning bid by a minority or non-minority bidder must constitute the least costly resolution for the RTC. The Bid Preference Provision of Section 21A (w)(17)(A) of the FHLBA gives a minority bidder a preference over a non-minority bidder only if both bids result in the "same cost" to the RTC under the least cost provisions of Section 13(c)(4) of FDIA for the resolution of the entire institution. Therefore, the minority status of a bidder constitutes a tie breaker on bids on an institution or branch located in a "predominantly minority neighborhood."

b. Whenever the premium bid by a minority bidder is within 10 percent of the highest premium bid by a non-minority bidder on an institution or branch located in a "predominantly minority neighborhood," a limited second round of bidding will be conducted, in order to give as much effect to the provision as possible without increasing the RTC's costs. The second round of bidding will be conducted as follows:

(1) The second round of bidding will only involve the subject (i.e., the whole institution or branches) of the minority bids located in a predominantly minority neighborhood that triggered the second round. Only the highest first round non-minority bidder(s) and the highest first round minority bidder(s) which were within 10 percent of the highest first round non-minority bid(s) are to be included in the second round of bidding. Multiple non-minority bidders may participate in the second round of bidding when the high first round bid is an aggregate of high bids on individual branches of the institution. Similarly, multiple minority bidders may participate in the second round of bidding when the second round has been triggered by different bids (e.g., a minority bid has triggered a second round on the whole institution and another minority bid has also triggered a second round on a branch). The above are not all inclusive examples. The Vice President for the Division of Resolutions must approve all second rounds of bidding.

(2) The second round of bidding will be conducted on a short time-frame (at least 2 business days, but not to delay the scheduled closing). The second-round bidders are to be informed of the date the second-round bids are due and of the reason for the second round (i.e., the 10 percent rule). The identity of

each bidder and the amount of their bids are not to be revealed to the other bidder(s).

6. Staff Responsibilities for Recommendations, Approvals and Dispute Resolution

a. Recommending Officials

(1) Vice Presidents and/or Directors in Resolution Offices in the field shall make a written recommendation to the Director, Office of Field Resolutions, Washington D.C., for designation of institutions and branch offices which are located in "predominantly minority neighborhoods."

(2) Assistant Directors, Office of Major Resolutions, Washington D.C., shall make a written recommendation to the Director, Office of Major Resolutions, Washington D.C., for designation of institutions and branch offices which are located in "predominantly minority neighborhoods."

b. Approving Officials

(1) The Directors, Office of Field Resolutions and Major Resolutions will be the "approving officials" for all "predominantly minority neighborhood" institution and branch office designations for institutions under their respective supervision.

(2) A copy of all approved recommendations will be forwarded to the Vice President, Division of Minority and Women's Programs.

c. Disputes. Any disputed designations between recommending officials, approving officials, prospective acquirors, or other interested parties will be forwarded by approving officials to the Vice President, Division of Resolutions and the Vice President, Division of Minority and Women's Programs who will jointly make the determination. If agreement can not be reached, the matter shall be forwarded to the Chief Executive Officer for final determination.

7. Contacts

a. For additional information and clarification of the terms or other provisions of this directive, contact Edward Thomas, Resolutions Specialist at (202) 416-7179.

b. For information on legal issues related to this directive, contact Gregory B. Smith, Senior Counsel, Resolutions at (202) 736-3013.

8. Effective Date. This directive is effective immediately.

Exhibit 5

RTC Conservatorship Institutions in Primarily Minority Neighborhoods

Institution	State(s)	No. of Branches	Deposits as of 12/31/93 ($ thousands)
Carrollton Homestead Association, FA	Lousiana	1	$13,611
Carteret FSB	Florida/New Jersey	40	$1,777,659
Columbia Banking FSA	New York	25	$740,747
Dryades *	Louisiana	8	$80,144
Home FSB	Virginia	6	$71,583
Life FSB	Louisiana	1	$9,975
Oak Tree FSB	Louisiana	19	$460,623
Security FS&LA	Mississippi	16	$195,253
Southern FSA of Georgia	Georgia	4	$65,568
Ukrainian FS&LA	Pennsylvania	2	$42,929
TOTAL		122	$3,458,092

* Transaction pending.

Note: Minority neighborhood locations are defined as those where 50% or more of the population in the zip code is minority. Minority institutions include those where the head office is located in a minority neighborhood or where 50% or more of the branches are located in a minority neighborhood.

EXHIBIT 6
ADDITIONAL BRANCHES OF RTC CONSERVATORSHIP INSTITUTIONS IN PRIMARILY MINORITY NEIGHBORHOODS

INSTITUTION NAME	STATE	TOTAL NO. OF OFFICES	TOTAL DEPOSITS AS OF 12/31/93 ($ thousands)	NO. OF OFFICES IN PRIMARILY MINORITY NEIGHBORHOODS	BRANCH DEPOSITS IN PRIMARILY MINORITY NEIGHBORHOODS* ($ thousands)
Altus FSB	Alabama	34	$457,115	5	$81,411
Cooper River FSA	South Carolina	7	$72,410	2	$44,607
Great American FSA	Arizona/Washington	82	$2,152,003	3	$87,871
Hollywood FSB	Florida	22	$579,040	2	$27,393
Jacksonville FSA	Florida	7	$78,818	1	$7,993
John Hanson SB	Delaware/Maryland	11	$159,913	4	$84,038
Pan American FSB **	California	6	$124,659	2	$32,367
Second National FSA	DC/DE/MD/PA/VA	34	$628,797	3	$81,161
Standard FSA	Maryland	11	$118,970	4	$41,976
Transohio FSB	Ohio	56	$1,450,086	3	$81,875
Western	California	27	$2,030,997	6	$357,776
TOTAL		297	$7,852,808	35	$928,468

* Branch deposit data as of 8/31/93.
** Minority Owned. Transaction pending.

Note: Minority neighborhood locations are defined as those where 50% or more of the population in the zip code is minority.

VERBAL QUESTION #3
VERBAL QUESTION FROM CHAIRMAN FLAKE

Verbal 3:

An explanation of how the RTC evaluates the performance of minority SAMDA contractors. Is this process subjective or objective?

ANSWER VERBAL 3:

The process described below applies to each SAMDA asset management contractor, irrespective of whether or not it is a minority contractor.

On November 28, 1990, the RTC issued a directive entitled "Oversight Manager Program" by which a comprehensive program was established to monitor the activities and performance of asset management contractors (AMC's), predominantly contractors assigned assets under the Standard Asset Management and Disposition Agreement (SAMDA). The Oversight Manager (OM) Program utilizes Field Office staff to manage and oversee the SAMDA contractors on a contract-specific basis. The administration of the SAMDA contractor's compliance with the terms of the SAMDA agreement is the joint responsibility of the Oversight Manager and the Contracts Administration Specialist within the RTC's Office of Contract Operations.

The OM Program was designed to ensure that AMC's are effectively carrying out their contractual obligations in conformance with RTC policies and procedures, particularly those set forth in the RTC's Asset Management and Disposition Manual. The monitoring responsibilities of the OM include the review of documents submitted by the contractor such as Asset Management and Disposition Plans and Business Plans, and reports tracking actual recoveries as compared to projected recoveries for each asset. The OM conducts a series of formalized site reviews consisting of quarterly or semi-annual contract review meetings and annual site visitations to discuss various performance issues and remedy any performance issues noted by the OM and other oversight staff.

In a corollary directive issued April 16, 1991, the RTC established uniform criteria to measure and rate the performance of AMC's. The performance ratings were designed to objectively evaluate and compare the projections outlined by the SAMDA contractors in the Asset Management and Disposition Plans with actual results obtained, and to assess overall compliance with SAMDA contract terms and conditions. These performance criteria and related pertinent information comprise an adequate basis to assess the SAMDA's performance in several key areas, and the comprehensive performance ratings provide a uniform standard to communicate the evaluation to each contractor.

The performance criteria consists of "primary" measures dealing with qualifiable results achieved by the contractors in the areas of cash collections, expenses, real estate sales, and distressed loan collections. "Secondary" factors, such as compliance with RTC asset management and disposition procedures and outreach efforts under the Minority and Women-Owned Business Program (MWOB) when soliciting subcontractors, are also considered in the overall assessment.

The performance evaluation, while predominantly relying on objective and quantitative criteria, also permits the inclusion of certain subjective considerations when developing the comprehensive rating. These subjective criteria allow for consideration of mitigating circumstances such as extraordinary litigation or environmental issues which could skew performance results by the SAMDA contractor.

On January 21, 1992, a revision of the RTC Asset Management and Disposition Manual was issued which consolidated the various requirements of the OM Program and provided a mechanism, the Asset Management Contractor Performance Visitation Checklist, through which a thorough assessment of performance and compliance with RTC policies, procedures and directives could be undertaken. The checklist was developed to represent each functional area of the RTC in order to review the SAMDA contractor's progress and performance comprehensively. Thus, in addition to the OM's review of quantitative factors such as collections, expenditures, and fee calculations, areas such as Affordable Housing, MWOB, appraisals, and subcontracting are also monitored by the appropriate RTC staff in order to more fully evaluate and determine contractor performance.

The Office of SAMDA Program Management has recently revised the Contractor Visitation Checklist to more appropriately reflect and emphasize certain critical performance areas. These areas include oversight and supervision by the SAMDA contractor of technical subcontractors such as

property managers and real estate brokers as well as systems maintenance issues related to ensuring ongoing data quality and integrity.

The classification of review factors into "primary" and "secondary" categories was eliminated and each of the six substantive performance areas are now equally weighted. This modification should help dilute the impact of the more subjective criteria in the overall process. The revised checklist will be issued and is expected to be in use by OM staff shortly.

The SAMDA program, as well as all other RTC functions and activities, is winding down during 1994. The vast majority of SAMDA contracts are scheduled to expire in this calendar year. However, Field Offices may require the services of selected contractors in order to efficiently and effectively downsize operations. On November 4, 1993, the SAMDA program issued guidelines for extending SAMDA/SAMA contracts (SAMA contracts entail asset management only, with no disposition activities) if demonstrated Field Office needs warrant.

The SAMDA extension program represents a collective and collaborative assessment from staff in the areas of SAMDA, Division of Legal Services, the Office of Contract Policy and Major Dispute Resolution, Division of Minority and Women's Programs and other applicable programs and offices. The selection process is intended to reach a consensus with all participants in the application of both qualitative and quantitative technical criteria. The extension program's broad objectives are to promote asset management continuity while minimizing the costs associated with the assignment of the remaining asset portfolios.

The technical criteria are weighted in terms of "most important", "more important" and "important". Among the factors deemed "most important" is the MWOB criterion, wherein the contractor's performance in meeting the SAMDA program's goal that thirty percent (30 percent) of total dollars funded under mandatory subcontracts be awarded to minority and women-owned firms, is given priority consideration. The contractor's overall participation in MWOB outreach efforts is also a related factor in this category.

Finally, it should be noted that throughout the history of the SAMDA program, the emphasis of both the OM Program and the AMC performance criteria and rating process is to provide timely and appropriate feedback to all the AMC's engaged in liquidating RTC-controlled assets. The OM Program is intended not only to enable performance deficiencies to be noted and addressed in a timely manner, but also to facilitate ongoing technical assistance by RTC staff in working with the contractor to remedy problems

and issues. It has been and continues to be in the RTC's best interest that all contractors perform to the optimum degree possible.

The Office of SAMDA Program Management will continue to work closely with the remaining AMC's during this year of phasing out RTC programs and functions. Indeed, the standards and criteria developed early in the RTC's existence, and subsequently revised, play an even more significant role as the RTC winds down its mission.

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VERBAL QUESTION #4
VERBAL QUESTION FROM CONGRESSMAN WATT

VERBAL 4:

An explanation of why MWOLFS represent approximately 56 percent of legal matters referred in 1993 and only received approximately 13 percent of fees paid. Will fees paid for work assigned in 1993 reflect percentages of assignments? If not, why not?

ANSWER 4:

Minority and women-owned law firms (MWOLF) received 58 percent of the referrals in 1993, and approximately 13 percent of fees paid in 1993. The 13 percent in fees paid, however, refers to fees paid on all referrals, including referrals of several years ago prior to the Division of Legal Services initiating its minority and women outreach program. A more accurate assessment of the current status of referrals-to-fees ratio is to compare the referrals to MWOLFs in 1993 (58 percent) with the fees paid to MWOLFs in 1993 (37 percent) on 1993 referrals.

There is no direct correlation between numbers of referrals and their dollar value. A small number of major cases generate a disproportionately far greater percentage of fees than is reflected by the percentage of cases. For example, 8.7 percent (referrals with budgets over $50,000) of all referrals represent 79.4 percent of the dollar value of all active matters.

Most recently, for matters with budgets under $50,000, 41 percent of those matters, representing 34 percent of the budgeted dollar value, are being handled by MWOLFs. For matters with budgets equal to or over $50,000, 23 percent of those matters, representing 15 percent of the budgeted dollar value, are being handled by MWOLFs. Consequently, the percentage of referrals never directly correlates to the percentage of dollars paid.

The large dollar referrals are generally handled by large firms due to such factors as availability of sufficient attorneys and support staff. Most MWOLFs with RTC Legal Service Agreements, however, are small firms. While the RTC practice is that cases which require substantial attorneys and support staff are assigned to large firms, the RTC generally encourages the large firms to establish working relationships with MWOLFs, with a goal of

the MWOLF performing at least 25 percent of the work and receiving payments commensurate with the work performed. Such relationships are advantageous to the MWOLFs because they are exposed to and gain experience in matters and issues they may not otherwise be able to handle, either by virtue of inexperience or the limited resources of a small firm.

For the reasons stated above, in 1994, MWOLFs will not receive fees in the same percentage as referrals, but will receive fees commensurate with the work they perform. As you may know, on May 20, 1992, the Division of Legal Services established a goal of MWOLFs receiving 20 percent of the fees generated by new referrals. From May 20, 1992, through April 7, 1994, the Division of Legal Services paid MWOLFs $57,999,683 (28 percent) out of $202,883,141 on all referrals made during that period. Also on May 20, 1992, the Division of Legal Services established a goal of minority and women attorneys in majority firms receiving at least 10 percent of fees paid to all firms. Since May 20, 1992, the Division of Legal Services has paid minority and women attorneys in majority firms $123,191,173 (24 percent) out of $518,479,578. Thus the Division of Legal Services has exceeded both its 20 percent and its 10 percent goals in its ongoing efforts to promote minority and women outreach.



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